

**A Test of Inequality:  
Discrimination against Women Living with HIV in the  
Dominican Republic**

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## I. Summary

The growing HIV/AIDS epidemic in the Dominican Republic is unfolding in the context of entrenched inequality between men and women and significant levels of high-risk behavior, such as low condom use, multiple sex partners, and early sexual activity. This situation has put women at increased risk of HIV infection and exacerbated the consequences for women of HIV-related human rights violations in the workplace and the health care system.

The Dominican Republic's government has taken steps to address the HIV/AIDS crisis in the country, such as in 2002 creating a multi-sector body—called the Presidential AIDS Council (*Consejo Presidencial del SIDA*, COPRESIDA)—to coordinate and monitor national public and private sector efforts to prevent the spread of HIV/AIDS. The government has also implemented a national program to reduce parent-to-child HIV transmission, and has sought international funding for long-term AIDS treatment programs. These are clearly positive and necessary steps in the right direction, for which the government should be commended.

However, the government has failed to take seriously the link—well-established and analyzed in international public health and human rights literature—between the spread of the disease and entrenched sex inequality, violence against women, and social biases that otherwise limit women's autonomy and rights. As a consequence, the HIV/AIDS policies, programs, and plans the Dominican Republic designed and implemented have in some areas failed to address adequately the acute human rights violations suffered by women, and, in others, have contributed to these violations.

This report focuses on what Human Rights Watch believes are the two areas most immediately in need of reform. The first is discrimination against women in the workplace, in particular through involuntary HIV tests administered to workers and jobseekers. Our research showed that women who apply for positions in the tourism industry or the free trade zones—the two main employers of women—are often tested for HIV as a condition of work, in violation of their right to nondiscrimination in access to work and in the workplace. None of the governmental mechanisms designed to enforce work-related rights protections have addressed these abuses adequately, allowing private employers to continue the abuse with impunity.

Human Rights Watch also identified serious deficiencies in the administration of public health care to women. When women use public health services, especially prenatal care

facilities, they are given grossly insufficient pre- and post-HIV test counseling, risk disclosure of their confidential HIV test results, and suffer abusive treatment by health personnel, including the delay or denial of medical procedures. Some women are subjected to pressure to be sterilized.

The routine release of confidential HIV test results, combined with the fact that women are more consistently offered HIV counseling and testing than are men, contribute to the perception that women are to blame for introducing HIV into their long-term unions. As a result, regardless of the actual source of the infection, many women who test positive for HIV are subject to ostracism, violence, or abandonment by spouses, long-term partners, or families. In the Dominican Republic, moreover, cultural norms dictate that women—but not necessarily men—should be faithful and that a woman is ultimately responsible even for her spouse’s infidelity.

Our research shows that national norms regarding counseling and testing for HIV are implemented in a manner that does not give women full information about their rights and choices. In several cases we found that doctors and other health personnel made important decisions about women’s lives and health without consulting the women. Women are prevented from giving their informed consent for subsequent tests and treatment, and an important HIV prevention tool has been lost by not giving women the support they need to protect themselves, their sexual partners, and their infants from HIV transmission in the future. The net result is the perpetuation of women’s rights violations.

A draft bill, pending introduction in the Dominican Congress at the time of writing would offer all pregnant women HIV counseling and mandates testing unless the women explicitly decline the test (sometimes referred to as “opt-out testing”). While the current version of the draft bill is less draconian than an earlier version, which called for mandatory testing for women, it would nonetheless have serious adverse consequences. Given the widespread lapses in HIV counseling documented in this report, “opt-out” testing could in practice become indistinguishable from mandatory testing in one significant respect: many women would not be given opportunity to make a genuinely informed decision as to whether to be tested. Unless serious efforts are made to guarantee quality and inclusive pre- and post-test counseling, this may result in violations of the right to informed consent. Given the rampant breaches of confidentiality also documented in this report, the new regime would be unlikely to contribute to overcome discrimination and abuse against women living with HIV.

The United Nations Joint Programme on HIV/AIDS, UNAIDS and the United Nations Office of the High Commissioner for Human Rights have consistently emphasized the importance of voluntariness, quality counseling, informed consent, and confidentiality in HIV testing and care as essential parts of HIV prevention strategies, notably in the United Nations International Guidelines on HIV/AIDS and Human Rights. This approach emphasizes the existence of a strong presumption in international human rights law in favor of systems that scrupulously respect the right to privacy through mechanisms of confidentiality, and informed consent. Before signing any proposed bill into law that explicitly or implicitly override these presumptions, the onus is on the Dominican government to demonstrate with concrete scientific evidence why such a limitation of rights is necessary and desirable. In any case, the government has an urgent obligation to women to guarantee essential pre- and post-test counseling for all tested individuals, as well as stringent confidentiality measures with a zero-tolerance policy for breaches of confidentiality.

The Dominican Republic has ratified international treaties requiring it to protect the human rights to privacy, physical integrity, the highest attainable standard of health, discrimination in access to work and in the workplace, and nondiscrimination on the basis of sex or health status such as being HIV-positive. These treaties include the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Elimination of all Forms of Discrimination against Women.

The report is based on interviews with women living with HIV in January 2004, in Santo Domingo, La Romana, San Pedro de Macorís, Santiago, and Puerto Plata in the Dominican Republic. In addition, Human Rights Watch briefly surveyed a number of women and men working in the hotel industry and free trade zone factories in Puerto Plata and Playa Dorada on the northern coast. We also interviewed government officials, United Nations agencies, nongovernmental organizations (NGOs), health care providers, public health sector personnel, and relevant private sector actors. All names and identifying information of women living with HIV interviewed have been changed to protect their privacy. For the same reason, certain identifying information has been withheld for other interviewees where necessary.

## II. Recommendations

### ***To the Government of the Dominican Republic***

Human Rights Watch calls on the Dominican Republic government to protect women's rights to privacy, the highest attainable standard of health, nondiscrimination, work, and freedom from violence in the context of the HIV/AIDS epidemic. The following actions are essential first steps:

- The Ministry of Public Health and Social Support (*Secretaría de Estado de Salud Pública y Asistencia Social*, SESPAS) should immediately stop all HIV testing without informed consent, and should insist on adequate pre- and post-test counseling in all relevant programs and policies. The ministry should establish an effective and independent oversight and complaint mechanism to ensure the proper implementation of the program to prevent parent-to-child HIV transmission and other health policies and norms relating to HIV/AIDS, including voluntary counseling and testing. This oversight mechanism should also periodically assess the level of information received by women whom medical personnel claim have given informed consent. The ministry should investigate and sanction all health personnel who disclose confidential HIV test results without authorization, if necessary with the revocation of medical licenses.
- The Directorate for Control of Sexually Transmitted Infections, HIV and AIDS (*Dirección General de Control de las ITS/VIH y SIDA*, DIGECITSS) should launch awareness campaigns to inform the public about women's human rights violations that contribute to the spread of HIV/AIDS, such as domestic and sexual violence, subordinate social status, and sex discrimination in the workplace and in access to work and services.
- The Ministry of Labor (*Secretaría de Estado de Trabajo*, SET) should ensure that all illegal HIV testing as a condition to gain or retain employment cease immediately. The ministry should investigate vigorously and in a timely fashion all allegations of HIV-based discriminatory practices and punish those responsible for such practices. The ministry should also ensure that labor inspectors are adequately trained in the enforcement of the AIDS law and actively investigate alleged violations of the prohibition on involuntary HIV testing. The legal assistance unit of the Ministry of Labor and other public legal assistance units should offer all necessary legal assistance for those living with HIV or AIDS whose employment has been wrongfully terminated or job applications illegally denied due to their HIV status, including through offering

free legal aid and the possibility of pursuing anonymous legal claims. The ministry should ensure, through public awareness campaigns and other means, that workers and employers in the Dominican Republic are aware of the rights of people living with HIV.

- The Directorate for Security and Health at Work (*Dirección General de Seguridad y Salud en el Trabajo*) should ensure that hygiene and security committees (bi-partite committees charged with monitoring worker's health and security in the workplace) receive appropriate training in the contents of the AIDS law and the Labor Code regarding the prohibition on discrimination because of HIV status. The office should ensure that the committees monitor for illegal HIV testing as a condition to gain and retain work, and that they understand how and where to report violations.
- The Ministry of Tourism (*Secretaría de Estado de Turismo*) should ensure that all illegal HIV testing as a condition to gain or retain employment in the tourism sector cease immediately. The ministry should investigate alleged HIV testing practices and punish hotels responsible for such practices, for example by revoking their operating licenses.
- The Ministry of Education (*Secretaría de Estado de Educación, SEE*) should ensure access to sex education in primary and secondary schools, both private and public. Sex education—tailored appropriately to age level and capacity—should cover the correct and consistent use of condoms as the most effective way to prevent HIV transmissions during sexual intercourse, including in long-term unions. Sex education should also include information on the inequality between men and women that contributes to putting women at risk of HIV transmission in the Dominican Republic.
- On behalf of the Dominican Republic government, the president should publicly condemn involuntary HIV testing as a condition to gain or retain employment as discrimination based on health status, indicating that such discrimination will not be tolerated and that appropriate sanctions will be applied to those responsible for violations. The president should also condemn unauthorized release of HIV test results and announce a zero-tolerance policy for such breaches of confidentiality. Finally, the president should publicly endorse and push for financial support for broad voluntary HIV counseling and testing programs that include adequate pre- and post-test counseling.
- The Dominican Republic congress should require ministries and appropriate government agencies, by law, to implement thorough training for work inspectors, health personnel, judges, magistrates, lawyers, and relevant local and national officials on

the laws and regulations that prohibit involuntary testing for HIV. Congress should also adopt adequate legal measures to allow persons living with HIV/AIDS to bring legal cases regarding alleged discrimination in anonymity and increase fines applicable for HIV-based discriminatory practices to allow for meaningful sanctions.

### ***To the Presidential AIDS Council (COPRESIDA)***

Human Rights Watch calls on the Presidential AIDS Council to prioritize the prevention of violations of women's human rights as a critical tool in combating the continued spread of the disease. As essential first steps, COPRESIDA should implement the following actions:

- Monitor and coordinate effective enforcement of the AIDS law with regard to the prohibition on HIV testing in access to health care services and work, as well as provisions to protect the confidentiality of those tested for HIV. Refer violations to relevant governmental agencies for further investigation and sanctions.
- Discourage legal or policy measures that infringe upon women's human rights, such as involuntary HIV testing or testing without proven access for all tested individuals to adequate pre- and post-test counseling and without stringent confidentiality protections.
- Engage community-based organizations that work with women living with HIV or AIDS, regardless of their current membership in the NGO AIDS Coalition which is part of COPRESIDA, to ensure the broadest possible reach of COPRESIDA's coordination work and information.

### ***To Donors and International Organizations***

Human Rights Watch calls on international bilateral and multilateral donors and United Nations agencies and entities to work with the Dominican Republic government to ensure that all mandatory and involuntary HIV testing practices cease immediately, and that HIV/AIDS related programs and policies do not discriminate against women in their intent or effect. The following actions are essential first steps:

- Donors and international organizations that fund health or HIV/AIDS-related programs in the Dominican Republic should engage with the Dominican Republic to

prevent involuntary HIV testing. Donors should support government and NGO programs for voluntary HIV counseling and testing services with adequate confidentiality protections, and should actively oppose involuntary testing or testing without explicit consent and adequate pre- and post-test counseling. Donors should support information campaigns aimed at eliminating women's human rights violations that contribute to the spread of HIV/AIDS, such as domestic and sexual violence and sex discrimination in the workplace and in access to work and services. Donors should also expand prevention options for women and girls, and fund prevention projects that aim to change the attitudes and behaviors that perpetuate women's subordinate status and the related risk of HIV infection.

- Donors and international organizations that fund programs in the Dominican Republic related to HIV/AIDS in the workplace, including the U.S. Department of Labor, should require that the programs address not solely HIV/AIDS prevention, but HIV/AIDS-related employment discrimination as well. Such donors should also support government and NGO information campaigns to educate workers about their right to refuse involuntary HIV testing by current or potential employers and about available mechanisms for redress if they are illegally tested.
- As part of monitoring of compliance with the International Covenant on Economic, Social and Cultural Rights, the U.N. Committee on Economic, Social and Cultural Rights should report on states' implementation or condoning of HIV testing without informed consent, adequate pre- and post-test counseling, and guarantees for the confidentiality of HIV test results.

### III. Background

#### ***The Dominican Republic: Economy and Health***

The Dominican Republic shares the Island of Hispaniola in the Caribbean with Haiti. The population of the Dominican Republic is approximately 8.5 million, with children under fifteen representing 33 percent of the total population.<sup>1</sup> The country's economy traditionally depended on the sugar cane industry, though the tourism industry and export processing zones have been central to the country's development strategy over the past two decades.<sup>2</sup> In fact, the tourism industry and the export processing industry in the country's free trade zones were in large part responsible for making the Dominican Republic's economy one of the world's fastest growing in the 1990s.<sup>3</sup> Since 1998, the Dominican Republic's economic growth has dropped significantly, though it is still quite high compared to economic growth in the region as a whole.<sup>4</sup>

Economic growth has not led to a notable increase in the country's investment in its health sector. As a percentage of the gross domestic product (GDP), public expenditure on health was consistently around 1.5 percent from 1991 to 2001.<sup>5</sup> This figure, compared to that of other countries with similar levels of development, such as Colombia and Venezuela, is quite low.<sup>6</sup> Nevertheless, the Dominican Republic has a

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<sup>1</sup> United Nations Development Program, "Human Development Indicators 2003," data from 2001 [online] [http://hdr.undp.org/reports/global/2003/indicator/cty\\_f\\_DOM.html](http://hdr.undp.org/reports/global/2003/indicator/cty_f_DOM.html) (retrieved April 5, 2004).

<sup>2</sup> Consejo Nacional de Zonas Francas de Exportación de la República Dominicana [National Council of Export Free Trade Zones of the Dominican Republic, CNZFE], "Informe Estadístico 2002" [Statistical Report 2002], 2002 [online] [http://www.cnzfe.gov.do/documentos/informes/Informe\\_Estadistico\\_2002\\_en\\_Espanol.pdf](http://www.cnzfe.gov.do/documentos/informes/Informe_Estadistico_2002_en_Espanol.pdf) (retrieved March 23, 2004); and Magdalena Rathe, Dayana Lora, and Laura Rathe, *Impacto Socio-Económico del VIH-SIDA en el Sector Turístico de la República Dominicana: Un Estudio de Caso en la Costa Este* [Socio-Economic Impact of HIV/AIDS in the Tourist Sector in the Dominican Republic: A Case Study on the East Coast] (Santo Domingo: Fundación Plenitud, March 2003).

<sup>3</sup> World Bank Caribbean Country Management Unit, *A Review of Gender Issues in the Dominican Republic, Haiti and Jamaica, Report No. 21866-LAC* (Washington, D.C.: World Bank, 2002), p. 5.

<sup>4</sup> World Development Indicators Database, "Dominican Republic Data Profile" (Washington, D.C.: World Bank, 2003) [online] <http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=DOM&CCODE=DOM&CNAME=Dominican+Republic&PTYPE=CP> (retrieved on April 13, 2004); and World Development Indicators Database, "Latin America and Caribbean Data Profile" (Washington D.C.: World Bank, 2003) [online] <http://devdata.worldbank.org/external/CPProfile.asp?SelectedCountry=LAC&CCODE=LAC&CNAME=Latin+America+%26+Caribbean&PTYPE=CP> (retrieved April 13, 2004).

<sup>5</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002* [Dominican Republic: Demographic and Health Survey 2002] (Calverton, Maryland: Measure DHS+, 2003), p. 8.

<sup>6</sup> Venezuela's annual national health expenditure as a percentage of GDP was 8.8 percent in 2002. The figure was 9.3 percent for Colombia, also in 2002. Pan American Health Organization, "Venezuela, Core Health Data Selected Indicators. Data Updated to 2002" [online] [http://www.paho.org/English/DD/AIS/cp\\_862.htm](http://www.paho.org/English/DD/AIS/cp_862.htm) (retrieved

health system that reaches a large proportion of the population at least for some services. At 99 percent, the proportion of pregnant women who receive professional maternal health care—in their home or at a clinic—is the highest in Latin America and the Caribbean, though maternal mortality still is higher than in Brazil, for example, where only 80 percent of pregnant women receive professional prenatal health care.<sup>7</sup>

## **Women's Status**

Women in the Dominican Republic suffer from many forms of inequality, discrimination, and social exclusion. Even though literacy and primary education enrollment levels in the Dominican Republic are relatively high for both women and men,<sup>8</sup> women are significantly underrepresented in the job market. Many women are subject to domestic violence or to severe limitations of their possibilities for social interaction and movement at the hands of their husbands or long-term partners.<sup>9</sup>

In a 2002 survey conducted by Measure DHS+ (DHS survey), an international organization that conducts regular health-related surveys in a number of countries worldwide, over half of the Dominican women interviewed who lived in a long-term union reported that their husbands or male partners expected them to disclose their whereabouts at all times. Eighteen percent of these women said their husband or male partner actively limited their access to friends, and 11 percent reported that he limited their access to family as well.<sup>10</sup>

Limited social interaction and movement within a long-term union may be a precursor to domestic violence, since it creates an environment where women are expected to submit to male authority. The 2002 DHS survey found that 24 percent of adult women

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March 15, 2004); and Pan American Health Organization, "Colombia, Core Health Data Selected Indicators. Data Updated to 2002" [online] [http://www.paho.org/English/DD/AIS/cp\\_170.htm](http://www.paho.org/English/DD/AIS/cp_170.htm) (retrieved March 15, 2004).

<sup>7</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, p. xxvii; and Pan American Health Organization, "MORTALIDAD MATERNA - PERINATAL - INFANTIL (América Latina y Caribe)" [Maternal mortality – Perinatal mortality – Infant Mortality (Latin America and the Caribbean)] [online] <http://www.paho.org/spanish/clap/05mort.htm> (retrieved March 11, 2004).

<sup>8</sup> In 2000, 16.3 percent of women and 16.3 percent of men were reported to be illiterate in the Dominican Republic. Ninety-three percent of girls were enrolled in primary school that same year, compared to 92 percent of boys. See World Bank, "Gender Stats, Summary Country Profile, Dominican Republic" [online] <http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=DOM,Dominican%20Republic&hm=home> (retrieved April 8, 2004).

<sup>9</sup> For the purpose of this report, "long-term union" refers to a couple who live together as if they were married, even though they may not be legally married. "Long-term partner" refers to a person in a spouse-like relationship.

<sup>10</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, table 12.5.1, p. 288.

in the Dominican Republic had suffered some form of physical abuse.<sup>11</sup> The same survey found that 27 percent of the surveyed women had suffered physical, sexual, or emotional abuse at the hands of their spouse or other partner in a long-term union, and 5 percent suffered all three types of abuse.<sup>12</sup> According to government figures, domestic violence was the fourth leading cause of death for women in 2000.<sup>13</sup> In 2003, 83 percent of female homicide victims were killed by their current or past spouses or long-term partners.<sup>14</sup> There are only five police stations in the country specialized to receive complaints concerning domestic violence (so-called “Friends of Women” stations), and only one functioning domestic violence shelter, which is run by an NGO.<sup>15</sup>

Women do not have equal access to work, and are not treated with equality in the workplace. A 2002 World Bank study showed that women earned only 76 percent of what men earned for equivalent work (63 percent in rural areas), and were more than twice as likely to be unemployed.<sup>16</sup> This was confirmed in the 2002 DHS survey, in which male interviewees were almost twice as likely to have been employed during the twelve months prior to the interview as female interviewees. For those married or in a long-term union at the time of the survey, 52.3 percent of the women reported being unemployed during the past twelve months, compared to only 3 percent of the men.<sup>17</sup>

Mariana Santos, an NGO health worker, explained to Human Rights Watch that this economic inequality between women and men reinforces male control over women in long-term unions. As she put it: “[The man] does not give her the money that she

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<sup>11</sup> Ibid., table 12.2.2, p. 283

<sup>12</sup> Ibid., table 12.6.1, p. 290

<sup>13</sup> Secretaría de Estado de la Mujer [Ministry for Women, SEM], *Estadísticas para la Planificación Social con Perspectiva de Género* [Statistics for Social Planning with a Gender Perspective] (Santo Domingo: Secretaría de Estado de la Mujer, 2000).

<sup>14</sup> Human Rights Watch phone interview with Susi Pola, journalist, Santiago, April 29, 2004. The numbers were compiled by Susi Pola from police records, court files, medical records, and press. See also, María Isabel Soldevila, “El Amor No Mata, El Amor No Puede Matar” [Love Does Not Kill, Love Cannot Kill] *A Primera Plana Año 1 No. 2*, February 2002 [online] <http://www.aprimeraplana.org/www/No.2/index.html> (retrieved April 16, 2004) (citing similar earlier statistics).

<sup>15</sup> Human Rights Watch phone interview with Mildred Baeltré, head, Area of Violence Against Women [Area de Violencia Contra la Mujer], Ministry for Women [Secretaría de Estado de la Mujer, SEM], Santo Domingo, March 26, 2004. Another NGO-run shelter was expected to open in May 2004. There are no immediate plans for the government to run shelters. Ibid.

<sup>16</sup> World Bank Caribbean Country Management Unit, *A Review of Gender Issues in the Dominican Republic, Haiti and Jamaica*, pp. 21-25.

<sup>17</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, tables 3.5, p. 58, and 3.18, p. 75.

needs, he manipulates her with money. We are a poor country, and many women ... depend on [their husbands].”<sup>18</sup>

The women Human Rights Watch interviewed reported several instances where control over the economic resources in the family was directly related to physical abuse. Rosa Polanco, for example, a thirty-year-old widow, told Human Rights Watch that her husband hit her on many occasions “because I reproached him for giving me little money.”<sup>19</sup> Joel Valerio, an organizer who runs NGO workshops on gender equality in Santiago’s free trade zones, recounted explanations he frequently heard men give at workshops. “The men say ‘it is true that we hit [women], but there are reasons: she is unfaithful, she spends too much money. ... I am the man, I decide.’”<sup>20</sup>

For Haitian women and Dominican women of Haitian descent living in the Dominican Republic, the discrimination they suffer as women is likely to intersect with discrimination because of their race or nationality.<sup>21</sup> Ernestina Abreu, an NGO community worker who assists women of Haitian descent in their access to health care, told Human Rights Watch that the women she worked with suffer discrimination as women, as Haitians, and because of their lack of economic resources. Abreu said that the doctors at the public hospital made condescending remarks to Haitian women that they would not make to Dominican women: “They say to the women: ‘Go somewhere else, we don’t have services for Dominican women, so much less for you’ ... or ‘when you were doing it [i.e. having sex], you weren’t screaming, don’t deny your color.’ They say this because supposedly black people don’t feel pain.”<sup>22</sup>

### ***Women Living with HIV/AIDS***

More than two million people are living with HIV in Latin America and the Caribbean.<sup>23</sup> About one quarter of these people live in the Caribbean, where approximately half of

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<sup>18</sup> Human Rights Watch interview with Mariana Santos, health worker, Association for the Well-Being of the Family [Asociación Pro-Bienestar de la Familia, PROFAMILIA], Santiago, January 17, 2004.

<sup>19</sup> Human Rights Watch interview with Rosa Polanco, Santiago, January 17, 2004.

<sup>20</sup> Human Rights Watch interview with Joel Valerio, health team member, One-Respe, Santiago, January 16, 2004.

<sup>21</sup> Human Rights Watch has documented the deep-rooted nature of the racially or ethnically motivated discrimination against Haitians and those of Haitian descent in the Dominican Republic. See Human Rights Watch, “Illegal People: Haitians and Dominico-Haitians in the Dominican Republic,” *A Human Rights Watch Report* Vol. 14 No. 1(B) (New York: Human Rights Watch, 2002); and Human Rights Watch, “A Troubled Year: Haitians in the Dominican Republic,” *A Human Rights Watch Report* (New York: Human Rights Watch, 1992).

<sup>22</sup> Human Rights Watch interview with Ernestina Abreu, health team member, One-Respe, Santiago, January 16, 2004.

<sup>23</sup> Joint United Nations Programme on HIV/AIDS, *AIDS epidemic update, December 2003* (Geneva: UNAIDS, December 2003), UNAIDS/03.39E, p. 23.

them are women.<sup>24</sup> Haiti and the Dominican Republic are at the epicenter of the HIV/AIDS epidemic in Latin America and the Caribbean. At approximately 2 percent of the adult population, HIV prevalence<sup>25</sup> in the Dominican Republic is second in the Caribbean only to that of Haiti. According to the Dominican Republic government, prevalence is increasing at a faster rate among women than men.<sup>26</sup>

The leading cause of death of Dominican women of reproductive age—defined as women between fifteen and forty-nine—is now HIV/AIDS.<sup>27</sup> By the end of 2001, women of that age group constituted 51 percent of all people in the Dominican Republic living with HIV or AIDS.<sup>28</sup> Of those recently infected with HIV, the proportion of women is greater.<sup>29</sup> UNAIDS estimates that over 70 percent of new HIV transmissions happen through heterosexual sex,<sup>30</sup> which means the proportion of women as opposed to men living with HIV or AIDS is likely to grow.<sup>31</sup>

Physiological factors put women and girls at higher risk for infection through unprotected vaginal sex, and economic inequality hampers women's ability to negotiate condom use. Because of social expectations regarding women's fidelity, women are often blamed for introducing HIV into their long-term union or marriage. "It is easier

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<sup>24</sup> Joint United Nations Programme on HIV/AIDS, *Report on the global HIV/AIDS epidemic* (Geneva: UNAIDS, July 2002), UNAIDS/02.26E p. 198.

<sup>25</sup> Prevalence refers to the percentage of HIV-positive people in a given population. Incidence refers to the rate at which people become infected. Studies in sub-Saharan Africa have shown that incidence may be high or rising while prevalence is falling. See Helen Epstein, "AIDS: The Lessons of Uganda," *New York Review of Books*, July 5, 2001, p. 18.

<sup>26</sup> Secretaría de Estado de Salud Pública y Asistencia Social [Ministry on Public Health and Social Support], *Normas y Procedimientos Nacionales para la Atención de las Infecciones de Transmisión Sexual (ITS)* [National Norms and Procedures for the Care of Sexually Transmitted Infections (STI)], Series of National Norms No. 25, Second Edition (Santo Domingo: Secretaría de Estado de Salud Pública y Asistencia Social, 2003), p. 16.

<sup>27</sup> Joint United Nations Programme on HIV/AIDS, *Dominican Republic* [online] <http://www.unaids.org/en/geographical+area/by+country/dominican+republic.asp> (retrieved February 25, 2004).

<sup>28</sup> Joint United Nations Programme on HIV/AIDS, *Report on the global HIV/AIDS epidemic*, p. 198.

<sup>29</sup> Joint United Nations Programme on HIV/AIDS, *Dominican Republic, Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections, 2002 Update* (Geneva: UNAIDS, 2002).

<sup>30</sup> The United States Agency for International Development (USAID) "El VIH y el SIDA en la República Dominicana y la intervención de USAID" [HIV and AIDS in the Dominican Republic and USAID Intervention] [online] [http://www.usaid.gov/espanol/hiv\\_dr.pdf](http://www.usaid.gov/espanol/hiv_dr.pdf) (retrieved April 30, 2004).

<sup>31</sup> During unprotected heterosexual vaginal sex, women and girls are physiologically more vulnerable to HIV infection than men and boys. Factors that contribute to this increased risk include the larger surface area of the vagina and cervix, and the high concentration of HIV in the semen of an infected man. See, e.g., Global Campaign for Microbicides, "About Microbicides: Women and HIV Risk," [online] <http://www.global-campaign.org/womenhiv.htm> (retrieved April 5, 2004); Joint United Nations Programme on HIV/AIDS, "AIDS: Five Years since ICPD—Emerging Issues and Challenges for Women, Young People and Infants" (Geneva: UNAIDS, 1998), p. 11; The Population Information Program, Center for Communications Programs, "Population Reports: Youth and HIV/AIDS," vol. 23, no. 3 (Washington, D.C.: John Hopkins University, Fall 2001), p. 7.

to forgive a man for having HIV than a woman. Men are supposed to run around [i.e. have sex outside their marriage or long-term union],” Sergia Galván, director of an NGO working on women’s health issues, explained to Human Rights Watch.<sup>32</sup> Cristina Francisca Luis, community educator from a Haitian-Dominican women’s organization, said women even sometimes blame themselves when they end up contracting HIV as a result of their husband’s infidelity: “The woman tells herself: ‘If I had been a good woman, he would have stayed home.’ She blames herself. ‘If I had been good company, he would not have run around.’”<sup>33</sup>

The social bias that women are faithful and ultimately responsible for their husband or long-term partner’s infidelity compounds the fear felt by many women of being known to be HIV-positive. The fear of HIV status disclosure is not unfounded. The domestic AIDS law requires sexual partner notification of people living with HIV. The law stipulates that the HIV-positive person may notify their sexual partners themselves or may defer notification to medical personnel.<sup>34</sup> This fear is further propelled by the prevalence of domestic violence. Several women told Human Rights Watch that their long-term partners repeatedly threatened them with violence as retribution for having a sexually transmitted infection, including HIV. “I was always afraid. [My husband] said if you have something [a sexually transmitted infection], I will kill you,” recalled Judelka de la Cruz.<sup>35</sup> Rosana Ramírez had a similar experience: “He said, you better be careful not to do anything bad.”<sup>36</sup> Both de la Cruz and Ramírez were unable to negotiate condom use with their husbands, whom they believed were the source of their HIV infection.

Women are more likely to have been tested for HIV than men—and thus probably more likely to know their status and to have their status known by others—reinforcing the perception that they are to blame for introducing HIV into their long-term unions. The 2002 DHS survey indicates that, at age nineteen, women were three times as likely to say that they had been tested for HIV as men. At age forty, two-thirds of women in the

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<sup>32</sup> Human Rights Watch interview with Sergia Galván, director, Collective for Women and Health [Colectiva Mujer y Salud], Santo Domingo, January 9, 2004.

<sup>33</sup> Human Rights Watch interview with Cristina Francisca Luis, community educator, Movement of Dominican-Haitian Women [Movimiento de Mujeres Dominicano-Haitianas, MUDHA], January 9, 2004.

<sup>34</sup> Ley 55-93 sobre SIDA [Law 55-93 regarding AIDS], signed into law on December 31, 1993 (AIDS law), article 21. Mandatory notification of HIV test results to sexual partners may translate into fear of HIV testing for some women, who have witnessed the abandonment and ostracism of women living with HIV in their community.

<sup>35</sup> Human Rights Watch interview with Judelka de la Cruz, La Romana, January 12, 2004.

<sup>36</sup> Human Rights Watch interview with Rosana Ramírez, San Pedro de Macoris, January 14, 2004.

Dominican Republic said that they had been tested for HIV, whereas less than 40 percent of men did.<sup>37</sup>

The relatively high proportion of both men and women who have been tested for HIV<sup>38</sup> is in part related to the fact that both men and women may be subject to involuntary HIV testing as a condition to gain employment.<sup>39</sup> As mentioned, women are less likely to be formally employed than men, but when they are, they tend to work in sectors—such as services, tourism, and the export-processing free trade zones—where companies are known to test for HIV as a condition for employment.<sup>40</sup> Many women are also tested when they use government prenatal health care, which obviously does not apply to men. In fact, if women were not tested during pregnancy, the likelihood of them knowingly being tested for HIV would be the same as for men.<sup>41</sup>

### **Public Awareness Campaigns, Sex Education, and Condom Use**

The Dominican Republic has launched several public awareness campaigns regarding HIV/AIDS, most focusing on the elimination of common prejudices in the community regarding people living with HIV/AIDS, or identifying certain situations of high-risk behavior.<sup>42</sup> While providing needed information, the campaigns have so far generally

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<sup>37</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, table 11.6.2 p. 249 and table 11.18 p. 269. The Demographic and Health Survey only measures the extent to which the interviewees know that they have been tested for HIV.

<sup>38</sup> By comparison, in the United States, approximately 45 percent of the total population (age eighteen to sixty-four) said they had been tested for HIV in 2001. Centers for Disease Control and Prevention, "HIV Testing – United States, 2001" [online] <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5223a2.htm> (retrieved April 13, 2004). In Latin America and the Caribbean, around 20 percent of the total population said they had been tested for HIV voluntarily in various countries across the region in the late nineties. Demographic and Health Surveys, "Data Tables (HIV/AIDS Surveys Indicator Database)" [online] [http://www.measuredhs.com/hivdata/data/start.cfm?action=new\\_table&userid=13599&usertabid=14901&CFID=906887&CFTOKEN=30905045](http://www.measuredhs.com/hivdata/data/start.cfm?action=new_table&userid=13599&usertabid=14901&CFID=906887&CFTOKEN=30905045) (retrieved April 13, 2004).

<sup>39</sup> HIV/AIDS experts agree that "HIV counseling and testing is a critical entry point for both prevention and [antiretroviral treatment] services." Global HIV Prevention Working Group, "HIV Prevention in the Era of Expanded Treatment Access" June 10, 2004 [online] <http://www.kff.org/hivaids/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=36965> (retrieved June 17, 2004) However, in the case of involuntary HIV testing as a condition to retain or gain work there is no treatment benefit to the individual who tests positive, and no prevention benefit for the state.

<sup>40</sup> Banco Central de la República Dominicana, Departamento de Cuentas Nacionales y Estadísticas Económicas [Central Bank of the Dominican Republic, Department of National Accounts and Economic Statistics] "Población de 10 años y más por Condición de Actividad según Género y Rama de Actividad Económica" [Population over 10 years of Age by Activity, Gender, and Economic Branch] (Santo Domingo: Banco Central de la República Dominicana, April 2002) [online] [http://www.bancentral.gov.do/mt\\_rama.html](http://www.bancentral.gov.do/mt_rama.html) (retrieved March 15, 2004).

<sup>41</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, Tables 11.6.2 p. 249 and 11.18 p. 269.

<sup>42</sup> Human Rights Watch interview with Rosa Flores, director, Unit for Attention to Sexually Transmitted Infections [Unidad de Atención a las Infecciones Sexualmente Transmetidas], Main Office on Control of

failed to address directly the social biases and prejudices that contribute to putting women at increased risk of HIV infection. Only one very short campaign several years ago, recalled only vaguely by an HIV/AIDS expert, focused on helping women to learn condom negotiation skills.<sup>43</sup>

Secondary schools are required to provide sex education for students thirteen years and older.<sup>44</sup> In recent years the most commonly used textbook in public schools is a book republished in 2002 by the Presidential AIDS Council: *Learning is Living*.<sup>45</sup> Though this book includes explicit information on the correct use of condoms, it fails to address the barriers that impede consistent use of condoms, especially for women. The book wrongly announces that “the vast majority of those who are sexually active use condoms,” and continues: “some men don’t like to use [condoms], principally because they don’t want to look bad in the eyes of women.”<sup>46</sup> It also wrongly states that condom use is necessary only for “dangerous” persons such as sex workers, men who have sex with men, and unfaithful husbands.<sup>47</sup> The book presents marital sex as the safest HIV prevention option—after abstinence—and counsels that the wives of unfaithful husbands “should be strong and demand that their husbands use condoms,” while failing to recognize that women in many cases may be unable to demand condom use for fear of violence or for fear of being thought unfaithful themselves.<sup>48</sup>

These assertions place the burden for increasing condom use almost exclusively on women and fly in the face of reality. The use of condoms in the Dominican Republic is among the lowest in Latin America and the Caribbean: around 2 percent depending on the age of the individual and 1.3 percent between long-term partners and spouses.<sup>49</sup> This

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Sexually Transmitted Infections, HIV and AIDS [Dirección General de Control de las ITS/VIH y SIDA, DIGECITSS], January 27, 2004.

<sup>43</sup> Ibid. Flores also did not recall the exact timing of the campaign.

<sup>44</sup> Human Rights Watch interview with Irma Levasseur, director, Office of Orientation and Psychology [Dirección de Orientación y Psicología], Ministry of Education [Secretaría de Estado de Educación, SEE], January 29, 2004. Private schools may design their own sex education programs, whereas public schools follow guidelines developed by the Ministry of Education. Teachers may recommend any textbook to the pupils.

<sup>45</sup> Ibid. The book was initially published in the early 1990s under the coordination of Family Health International (FHI). Human Rights Watch phone interview with César Castellanos, associate researcher, National Health Institute (Instituto Nacional de la Salud, INSALUD), Santo Domingo, April 22, 2004.

<sup>46</sup> Presidential AIDS Council [Consejo Presidencial de SIDA, COPRESIDA], *Aprender es Vivir: Serie Módulos Educativos Dirigidos A Adolescentes [Learning is Living: Series Educational Lessons Directed at Adolescents]* (Santo Domingo: COPRESIDA, 2002), p. 38.

<sup>47</sup> Ibid., p. 37.

<sup>48</sup> Ibid.

<sup>49</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, table 5.3, p. 99. By comparison, in Nicaragua, where a similar proportion of women use modern contraceptive methods, 8.7 percent of sexually active women (3.3 percent of women in marriages or long-term unions) use condoms. Demographic and Health Surveys, *Nicaragua: Encuesta Demográfica y de Salud 2001* [Nicaragua:

sex education perpetuates a strong social bias against condom use and implies that those who use condoms belong to “dangerous” groups, with the stigma and discrimination that might entail.

Low rates of condom use in the Dominican Republic are in part the product of social biases, most of which have been ignored or are perpetuated by the sex education materials. Most women Human Rights Watch interviewed said they were unable to negotiate condom use, and assumed their partners were faithful or that the men used condoms with other sexual partners. Olga López, thirty-six, explained why she did not use condoms with her ex-husband, who she believes infected her with HIV: “He was my partner, and that’s what all women will tell you. I did not think I was at risk. Here we consider at risk those who do sex work or have several partners.”<sup>50</sup> Alesandra Ebrito, whose husband died of AIDS four years ago, recalled: “I thought condoms were for casual sex. . . . I thought that he was faithful.”<sup>51</sup> Rosana Ramírez told Human Rights Watch that her husband told her he did not need to use condoms with her, because “he says that when he runs around [i.e. has sex with other women], he puts it on.”<sup>52</sup> Judelka de la Cruz, thirty-one, said that her husband accused her of infidelity or of being HIV-positive every time she asked him to use a condom, so to avoid the accusation, she stopped asking.<sup>53</sup>

Public campaigns and sex education can contribute to change the behavioral patterns that contribute to HIV transmission by challenging popular attitudes toward, for example, condom use. To be successful, however, the campaigns and education must take into account the behavioral patterns they propose to change, which, in the Dominican Republic, include extremely low use of condoms and high levels of sexual inequality and violence against women. By failing to address these issues, the campaigns have been inadequate. While not necessarily directly related to such inadequacies, it is noteworthy that surveyed women in 1996 and 2002 displayed a significantly drop in awareness with regard to both correct and incorrect methods to prevent HIV transmission, despite public campaigns and sex education.<sup>54</sup> The proportion of surveyed

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Demographic and Health Survey 2001] (Calverton, Maryland: Measure DHS+, 2001), table 5.4.2, p. 100. In Colombia, also with a similar coverage of modern contraceptive methods, the percentage of women using condoms is 21.2 percent for sexually active women and 6.1 percent for women in marriages or long-term unions. Demographic and Health Surveys, *Colombia: Encuesta Demográfica y de Salud 2000* [Colombia: Demographic and Health Survey 2000] (Calverton, Maryland: Measure DHS+, 2000), table 5.4, p. 56.

<sup>50</sup> Human Rights Watch interview with Olga López, Santiago, January 19, 2004.

<sup>51</sup> Human Rights Watch interview with Alesandra Ebrito, San Pedro de Macorís, January 14, 2004.

<sup>52</sup> Human Rights Watch interview with Rosana Ramírez, San Pedro de Macorís, January 14, 2004.

<sup>53</sup> Human Rights Watch interview with Judelka de la Cruz, La Romana, January 12, 2004.

<sup>54</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, table 11.1, p. 238; and Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud*

women who, unprompted, mentioned condom use as a specific method to avoid HIV infection fell almost 10 percentage points in this time period.

#### IV. Violations in Access to Work and at the Workplace

Women and men are routinely tested for HIV as a condition for access to work in two of the Dominican Republic's most important industries: the tourism industry and the export processing industry in free trade zones.<sup>55</sup> Domestic law prohibits the administration of HIV tests as a condition for work, but the law is not implemented, and many workers Human Rights Watch spoke to did not even know the testing was illegal. Both the tourism industry and the export processing industry are essential to the country's development strategy for generation of foreign currency and, indeed, employment. Women, in particular, look to the tourism industry<sup>56</sup> and free trade zones for work.<sup>57</sup>

Involuntary HIV testing as a condition for work is a violation of the human right of all individuals to have the opportunity to gain their living by freely chosen work without discrimination of any kind, as protected by articles 6 and 2(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>58</sup> The lack of effective

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1996 [Dominican Republic: Demographic and Health Survey 1996] (Calverton, Maryland: Measure DHS+, 1996), table 10.5, p. 171.

<sup>55</sup> In 2002, the free trade sector employed 171,000 persons, most of them women, and generated about 80 percent of Dominican Republic's exports. Consejo Nacional de Zonas Francas de Exportación de la República Dominicana, "Informe Estadístico 2002," 2002. The tourism industry generated over 40 percent of the Dominican Republic's GDP in 1999, in visitor expenditures alone. Economic Commission for Latin America and the Caribbean, *A Review of Caribbean Tourism in the 1990s and at the Beginning of the New Century* (Port-of-Spain, Trinidad and Tobago: Economic Commission for Latin America and the Caribbean, February 26, 2003) LC/CAR/G.734 [online] <http://www.cepal.org/publicaciones/PortOfSpain/4/LCCARG734/G0734.pdf> (retrieved March 23, 2004), p. 12.

<sup>56</sup> Demographic and Health Surveys, *República Dominicana: Encuesta Demográfica y de Salud 2002*, table 3.6 p. 59, table 3.19, p. 76; and Banco Central de la República Dominicana, Departamento de Cuentas Nacionales y Estadísticas Económicas, "Población de 10 años y más por condición de actividad según género y rama de actividad económica".

<sup>57</sup> Consejo Nacional de Zonas Francas de Exportación de la República Dominicana, "Informe Estadístico 2002", p. 3.

<sup>58</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. A/6316 (1966), ratified by the Dominican Republic in 1978, articles 2(2) and 6. Article 2(2) reads: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 6 reads: "1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and

legal protection also constitutes a violation of the right to equal and effective protection against discrimination of any kind, contained in article 26 of the International Covenant of Civil and Political Rights (ICCPR).<sup>59</sup>

Dominican domestic legislation specifically prohibits HIV testing as a condition for obtaining or remaining in a job, setting the sanction for companies that practice such testing at 30,000 to 100,000 pesos [U.S.\$667 to U.S.\$2,222],<sup>60</sup> plus compensation in the amount of one year of salary for the affected worker.<sup>61</sup> This law is honored in the breach. Many women workers told Human Rights Watch that they were subjected to involuntary HIV tests in both the tourism and export processing sectors with the clear intent of denying them work or firing them if they tested positive.

The testimony of Gabriela López illustrates the impact that these violations can have. López, twenty-four, had known for about two years that she was HIV-positive. She had five children, ages one to eight, and said she was infected by her husband who had raped her repeatedly. “He took me by force. He was jealous. He was a bit violent, I guess. He said ‘Oh, yes, you will. I want sex. Do you have another man?’” López said she agreed to sex to prevent her husband from beating her. Condom use was never discussed. López became the sole provider for her children in 2002 after she tested positive for HIV during her last pregnancy because her husband decided at that point to move in with his mother. “He has brushed away any responsibility. He does not have anything to do with these children now.”<sup>62</sup>

In her attempt to make enough money to feed her children, López tried to get a job in the free trade zones and the tourism industry. In both sectors, she was fired from jobs for being HIV-positive. At the free trade zone job, she said “They did a test. They did not tell me what it was. They just took my blood, right there. Then they fired me. I had been working for three months.” In the hotel industry, she said the company apparently relied on hearsay to guess her HIV status and then fired her. She believed that she was

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cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.”

<sup>59</sup> International Covenant on Civil and Political Rights (ICCPR), U.N. Doc. A/6316 (1966), ratified by the Dominican Republic in 1978, article 26. Article 26 reads: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”

<sup>60</sup> The exchange rate used is 45 Dominican pesos to one U.S. dollar, the rate on March 26, 2004.

<sup>61</sup> Ley 55-93 sobre SIDA [AIDS law], articles 3(a) and 36.

<sup>62</sup> Human Rights Watch interview with Gabriela López, La Romana, January 13, 2004.

dismissed due to her HIV status because they fired her immediately after she told colleagues about her husband's hospitalization. "The same day my husband came out of the hospital [for an AIDS-related illness] they fired me." She had worked at the hotel for several months. López now maintains herself and her children through random jobs. "Day after day I have this difficulty, are they going to accept me or not. ... My son says 'Mommy, I want a cookie,' but I don't have anything."<sup>63</sup>

### ***Involuntary Testing in the Tourism Industry***

*I looked for work again at [a hotel in Bávaro]. I spent 1,000 pesos [U.S.\$59]<sup>64</sup> to get my papers ready. They did the interview. They sent me to do analysis. ... The next day they tell me that they can't give me a job because I have HIV. Just like that. I had used money that I did not have to go to the interview. They said, "We can't give work to someone like that." I did not know until then that I had HIV.*

—Sergia Báez, thirty-three years old<sup>65</sup>

Two recent independent studies note that HIV testing as a condition to gain or retain employment in the tourism industry is widespread.<sup>66</sup> This conclusion is confirmed by the evidence Human Rights Watch gathered. Bayardo Gómez, founder of an NGO that has engaged with the hotels on the northern coast to convince them to stop illegal HIV testing practices, told Human Rights Watch that many hotels carry out HIV testing as part of a misguided marketing strategy to be able to declare their hotels "AIDS free" for tourists.<sup>67</sup>

The Caribbean has been a popular tourist destination for American and European tourists for decades. Spanish-speaking Caribbean destinations, led by the Dominican Republic, emerged as major Caribbean tourist destinations in the latter part of the

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<sup>63</sup> Ibid.

<sup>64</sup> The exchange rate used is seventeen Dominican pesos to one U.S. dollar, the average rate in 2001 at the time of the incident.

<sup>65</sup> Human Rights Watch interview with Sergia Báez, Santo Domingo, January 15, 2004.

<sup>66</sup> See Juan A. Llado, *La Situación de la Oferta y la Demanda de los Servicios de Salud para los Empleados Hoteleros de la Costa Este* [The Situation of Supply and Demand of Health Services for Hotel Employees on the East Coast] (Santo Domingo: AcciónSIDA/Academy for Educational Development, November 2, 2001). Magdalena Rathe, Dayana Lora, and Laura Rathe, *Impacto Socio-Económico del VIH-SIDA en el Sector Turístico de la República Dominicana: Un Estudio de Caso en la Costa Este*.

<sup>67</sup> Human Rights Watch interview with Bayardo Gómez, director, Center for Advancement and Human Solidarity [Centro de Promoción y Solidaridad Humana, CEPROSH], Puerto Plata, January 22, 2004.

1990s.<sup>68</sup> In the Dominican Republic from 1992 to 1999 the tourism industry grew 74 percent in terms of number of stay-over arrivals, 467 percent in terms of cruise arrivals, and 102 percent in terms of visitor expenditure. By 1999, the Dominican Republic had the highest number of hotel rooms of any Caribbean country—whether Spanish-, French-, or English-speaking—at almost 50,000 rooms.<sup>69</sup> The hotel sector suffered from the tourism decline following the attacks on the United States on September 11, 2001. However, the Dominican tourism industry is reported to have suffered less than that of other countries.<sup>70</sup> Indeed, despite the post-September 11 tourism crisis, the devaluation of the Dominican peso against the U.S. dollar in 2002 contributed to an increase in the number of American tourists traveling to the Dominican Republic to over 710,000 from 666,000 in 2001.<sup>71</sup>

Human Rights Watch spoke to several women living with HIV who had been fired or not hired in the tourism industry, presumably because of their HIV status. Antonia Martínez, for example, told Human Rights Watch that she had looked for a job in October 2001 at Playa Dorada, one of the most popular vacation destinations for European and American tourists. She was tested for HIV on the spot. “They take your blood themselves and they send it to a laboratory. They said that they could not give me work [and that] they do not give work to people with HIV. The head of personnel called me [to tell me]. ... I can’t look for work now.”<sup>72</sup>

Human Rights Watch spoke to hotel employees who said that HIV testing was routine for hiring in the hotel industry, and in many cases was followed up by periodic retesting. Those who test positive were fired or simply never hired. “You can’t work here if you are not healthy,” said one hotel receptionist.<sup>73</sup> A hotel manager told Human Rights

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<sup>68</sup> Economic Commission for Latin America and the Caribbean, *A Review of Caribbean Tourism in the 1990s and at the Beginning of the New Century*, p. 15.

<sup>69</sup> *Ibid.*

<sup>70</sup> Magdalena Rathe, Dayana Lora, and Laura Rathe, *Impacto Socio-Económico del VIH-SIDA en el Sector Turístico de la República Dominicana: Un Estudio de Caso en la Costa Este*, p. 19.

<sup>71</sup> In 2000, 644,000 U.S. tourists arrived in the Dominican Republic by air. Banco Central de la República Dominicana [Central Bank of the Dominican Republic], “Llegada Mensual de Pasajeros, Vía Aerea, Por Nacionalidad 2001” [Monthly Arrival of Passengers, By Air, By Nationality 2001] [online] [http://www.bancentral.gov.do/lleg\\_men\\_nac2001.html](http://www.bancentral.gov.do/lleg_men_nac2001.html) (retrieved April 5, 2004); Banco Central de la República Dominicana, “Llegada Mensual de Pasajeros, Vía Aerea, Por Nacionalidad 2002” [online] [http://www.bancentral.gov.do/lleg\\_men\\_nac2002.html](http://www.bancentral.gov.do/lleg_men_nac2002.html) (retrieved April 5, 2004); and Banco Central de la República Dominicana, “Llegada Mensual de Pasajeros, Vía Aerea, Por Nacionalidad 2000” [online] [http://www.bancentral.gov.do/lleg\\_men\\_nac2000.html](http://www.bancentral.gov.do/lleg_men_nac2000.html) (retrieved April 5, 2004).

<sup>72</sup> Human Rights Watch interview with Antonia Martínez, Puerto Plata, January 20, 2004. Playa Dorada is a stretch of beaches on the northern coast of the Dominican Republic.

<sup>73</sup> Human Rights Watch interview with [name withheld], receptionist, Paradise Beach Resort and Casino, Playa Dorada, January 21, 2004.

Watch that the hotel she worked at retested employees for HIV about every six months, and that they generally fired HIV-positive employees within two to three days after receiving the test results.<sup>74</sup>

### ***Involuntary Testing in Free Trade Zones***

*I went to the free trade zone. They sent me to do a pregnancy test and an HIV test. They send you to a laboratory. They take your blood. ... Then they send the results to the boss. ... Then the boss tells you there is no work.*

—Judelka de la Cruz, thirty-one years old<sup>75</sup>

Many companies operating in the Dominican Republic's free trade zones routinely tested job applicants for HIV and pregnancy.<sup>76</sup> Those who were HIV-positive were not hired. Most often, the company required a blood sample for testing and did not disclose to the potential employee which specific tests were done. The results were generally sent directly to the company's personnel department without informing the tested individual. In some companies, employees were retested periodically or even arbitrarily because of rumors that they were HIV-positive.

Since their creation in 1969, free trade zones have played an important role in the Dominican Republic's economy. In 2001, free trade zone exports accounted for 32 percent of the Dominican Republic's total exports of goods and generated net exports of nearly U.S.\$1.7 billion, or 7.9 percent of the GDP.<sup>77</sup> Those numbers have been increasing in recent years and are predicted to continue to do so.

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<sup>74</sup> Human Rights Watch interview with [name withheld], front area manager, Paradise Beach Resort and Casino, Puerto Plata, January 20, 2004.

<sup>75</sup> Human Rights Watch interview with Judelka de la Cruz, La Romana, January 12, 2004.

<sup>76</sup> Though this report focuses on illegal HIV testing as a condition for work, it should be noted that pregnancy testing as a condition to gain or retain employment also is prohibited by international law. Human Rights Watch has documented sex discrimination in the workplace in many countries, including the Dominican Republic. See Human Rights Watch, "Pregnancy Based Sex Discrimination in the Dominican Republic's Free Trade Zones: Implications for the U.S.-Central America Free Trade Agreement (CAFTA)," *A Human Rights Watch Briefing Paper*, 2004; Human Rights Watch, "A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector," *A Human Rights Watch Report*, 1998; Human Rights Watch, "No Guarantees: Sex Discrimination in Mexico's Maquiladora Sector," *A Human Rights Watch Report*, B806, 1996; Human Rights Watch, *From the Household to the Factory: Sex Discrimination in the Guatemalan Labor Force* (New York: Human Rights Watch, 2002); and Human Rights Watch, "Women's Work: Discrimination Against Women in the Ukrainian Labor Force," *A Human Rights Watch Report*, Vol. 15, No. 5(D), 2003.

<sup>77</sup> Economist Intelligence Unit, *Dominican Republic: Country Report October 2003* (United Kingdom: The Economist Intelligence Unit, October 2003), data used from table on p. 5.

In 2002, the free trade zones employed approximately 171,000 persons, 70 percent of them in the textile manufacturing sector.<sup>78</sup> Women constitute the majority of the workforce in free trade zone industries, including pharmaceuticals, textile manufacturing, electronics, tobacco, and plastic products.<sup>79</sup> Jobs in the free trade zones are an important source of employment for women nationwide but have only a marginal impact on employment rates for men, who have many more employment opportunities within other sectors of the Dominican economy.<sup>80</sup>

Forty-two-year-old Aracela Lantigua, had worked at four different companies in two free trade zones in Santo Domingo over the past two decades, and was also active in the movement of people living with HIV in Santo Domingo. She found out that she was HIV-positive in 1985, when she was tested during a hospital visit. Her husband died from AIDS-related diseases in 1996. She therefore already knew that she was HIV-positive when she was fired from a free trade zone company in 1999 after they tested her, she believes, for HIV. “When I was fired, they said they were laying off people. That’s what they say—it is a method they use. ... They told us to take our clothes and go to a laboratory. ... They fired everyone with HIV, everyone.” Lantigua explained to Human Rights Watch that she believed many companies cover up the fact that they are carrying out illegal HIV testing: “They give you a list of analyses and they send you to a laboratory. They say [the test] is for pregnancy, but it is blood, and from that they [test for] everything. If you have HIV, they don’t tell you that you have HIV. They tell you something [to fire you], but not that [you have HIV].”<sup>81</sup>

Rosa Polanco, thirty-four, believed she was tested for HIV and pregnancy before she was offered a job at a shoe-manufacturing company at a free trade zone in Santiago in 2001. At that point, she said, she must have been HIV-negative because she was offered a job. She had been working for one year and eight months at this company when she was hospitalized for two months with a liver infection. During her hospital stay, she was tested for HIV without her consent, and a doctor told her that she had HIV in front of her daughters.<sup>82</sup> “When I came back to work, there were rumors that the father of my children had died from [AIDS]. They sent me to do the test. They took a group out [to get tested for HIV] so that it would not be suspicious. I lasted about a week. Then they

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<sup>78</sup> Consejo Nacional de Zonas Francas de Exportación de la República Dominicana, “Informe Estadístico 2002,” p. 3.

<sup>79</sup> *Ibid.*, p. 30.

<sup>80</sup> Banco Central de la República Dominicana, Departamento de Cuentas Nacionales y Estadísticas, “Población de 10 años y Más por Condición de Actividad Según Género y Rama de Actividad;” and Consejo Nacional de Zonas Francas de Exportación de la República Dominicana, “Informe Estadístico 2002”, p. 30.

<sup>81</sup> Human Rights Watch interview with Aracela Lantigua, Santo Domingo, January 11, 2004.

<sup>82</sup> Polanco also faced abuses in the health sector. See below footnote 143 and accompanying text.

did a reduction of the personnel. The others [who were laid off] were trainees—they had worked there very little time. They included me in that group.”<sup>83</sup>

Some companies discriminated against allegedly HIV-positive employees solely based on rumors. Dominga Céspedes, thirty years old, found out that she was HIV-positive when she was pregnant with her third child in 2000. She was fired from a company in a free trade zone some time later: “Someone told ... my husband’s cousin [that I have HIV], and she told them at the factory. They called me to tell me that they were laying off personnel. I got one week. ... I saw that they were hiring persons, so they did not have to lay off anyone, and that’s how I found out [that they had fired me because of my HIV status.]”<sup>84</sup>

Human Rights Watch research suggests that companies operating in free trade zones generally tested female job seekers for HIV through private laboratories either within the zones or in nearby cities. Human Rights Watch spoke to representatives from commercial laboratories that carried out HIV testing for companies in the free trade zones in two cities in the northern part of the Dominican Republic,<sup>85</sup> the area with the largest concentration of free trade zones.<sup>86</sup> Both laboratory representatives confirmed that they were contracted by companies in the nearby free trade zones to carry out HIV testing of job seekers. One laboratory manager said: “We do many different tests for the free trade zones. ... With HIV it depends on the employer, because with HIV there is a law that says you cannot do it [test for HIV], so that is only upon request from the company. They have to authorize it.”<sup>87</sup>

When laboratories and companies transfer personal information regarding the HIV status of a job applicant or employee to third parties—including companies—without that person’s authorization, their actions are inconsistent with the right to privacy, as protected by article 17 of the ICCPR.<sup>88</sup>

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<sup>83</sup> Human Rights Watch interview with Rosa Polanco, Santiago, January 19, 2004.

<sup>84</sup> Human Rights Watch interview with Dominga Céspedes, La Romana, January 12, 2004.

<sup>85</sup> Human Rights Watch interview with [name withheld], Laboratorio García & García, Santiago, January 19, 2004; Human Rights Watch interview with [name withheld], Laboratorio Clínico, Puerto Plata, January 22, 2004.

<sup>86</sup> Consejo Nacional de Zonas Francas de Exportación de la República Dominicana, “Informe Estadístico 2002.”

<sup>87</sup> Human Rights Watch interview with [name withheld], Laboratorio García & García, Santiago, January 19, 2004.

<sup>88</sup> ICCPR, article 17. Article 17 reads: “1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

## **Adverse Effects of Involuntary Workplace Testing**

*If I didn't have HIV, I would be working, I would be with my children.... I feel less worthy than other persons because people treat me like a parasite in society. I would like to be useful again.*

- Rosa Polanco, thirty-four years old<sup>89</sup>

The main effect of involuntary HIV testing in the workplace was unemployment, underemployment, and a general sense of disempowerment and lack of legal protection for women living with HIV. Moreover, the lack of public information on workers' rights in this area created the notion that all or most companies tested for HIV upon application for a job, even where this was not the case. Consequently, many women living with HIV decided not to apply for jobs because they did not want to risk exposing their HIV status.

Those who were excluded from the job market because of their HIV status often suffered long-term consequences, including permanent unemployment. Many women living with HIV were abandoned by their partners and left as sole providers for children. The economic hardship brought on by discrimination in access to work was therefore compounded by further economic burdens. As a consequence, some women found themselves forced to engage in work they would otherwise never have considered, including sex work.

Cristable de Yasmín, a thirty-two-year-old mother of three including a nine-year-old HIV-positive daughter, was visibly ashamed to tell Human Rights Watch that her economic situation sometimes forced her to sell sex. She struggled to hold back tears as she explained how her "normal waitress job" sometimes turned into sex work when she was particularly strapped for money. "If someone offers you money [for sex] then there is no choice. I don't want to, and I don't always do it, but sometimes, I am a single mother, I have to make some money."<sup>90</sup>

Human Rights Watch interviewed many women who were unable to find gainful employment after they had been tested and fired either in the tourism industry or in the free trade zones. However, a more pervasive effect of the testing was its chilling effect.

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<sup>89</sup> Human Rights Watch interview with Rosa Polanco, Santiago, January 17, 2004.

<sup>90</sup> Human Rights Watch interview with Cristable de Yasmín, Puerto Plata, January 20, 2004.

Virtually all women living with HIV we interviewed who had previously worked in the formal sector said they had stopped applying for jobs for fear of being tested, denied work, stigmatized in their communities, and eventually abandoned by their partners. Margarita de la Cruz, thirty-four, used to work in the hotel industry as a manager but has not attempted to get a job since she tested positive for HIV three years ago. “Now it is very different, I don’t want them to do that [HIV test] to me.”<sup>91</sup> Fatima Pérez said that she had thought about looking for work, but “what happens is that those of us who live with this [HIV], all doors are closed to us. I am afraid to look [for work], because they will do the test.”<sup>92</sup>

Since women were more likely to know their HIV status than men, they were also more likely to refrain from applying for jobs for fear of involuntary HIV testing and thus potentially more affected by the consequences of illegal HIV testing for access to work. Further, many women were tested for HIV and excluded from the workforce because of their HIV status while they were highly capable of work. Perhaps the most common testimony we gathered from women living with HIV was a desire to work and—through work—to regain some sense of autonomy, control, and dignity. “All I want is a job,” Sergia Báez told Human Rights Watch. “I know that with a job and my willpower, I will move on.”<sup>93</sup>

### **Government Response**

The government has not intervened in any meaningful way to prevent or respond to blatant violations of the rights to nondiscrimination and privacy perpetrated by employers in the Dominican Republic. Both international and domestic law prohibits HIV testing as a condition to gain or retain employment, and domestic law establishes sanctions for companies that breach this prohibition.<sup>94</sup> The government has taken few steps to implement these provisions, and none that compel companies to adhere to the law. Companies may be quite aware that HIV testing is illegal, yet they have little incentive to stop this practice.

The Ministry of Labor has three mechanisms designed to ensure adherence to the domestic Labor Code and other relevant legislation such as the AIDS law. First, local offices of the Labor Ministry employ labor inspectors. The role of the labor inspectors is to visit companies upon request or at the inspector’s own initiative, interview

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<sup>91</sup> Human Rights Watch interview with Margarita de la Cruz, San Pedro de Macoris, January 14, 2004.

<sup>92</sup> Human Rights Watch interview with Fatima Pérez, Santiago, January 19, 2004.

<sup>93</sup> Human Rights Watch interview with Sergia Báez, Santo Domingo, January 15, 2004.

<sup>94</sup> Ley 55-93 sobre SIDA [AIDS law], article 3 and 36.

employers and employees freely, and report violations of the Labor Code and other work-related legislation to the Ministry of Labor.<sup>95</sup> Second, companies with more than twenty employees are obliged to form bi-partite<sup>96</sup> “hygiene and security committees” that operate within the company to oversee and address problems relating to industrial hygiene and security.<sup>97</sup> By law, these committees must cooperate closely with the Directorate on Security and Health at Work within the Ministry of Labor and report problems or infractions periodically. In order to benefit from the national health insurance, workers must participate or collaborate with the hygiene and security committee in their company.<sup>98</sup> Finally, the Ministry of Labor operates an office within the ministry that provides free legal aid to assist individuals with work-related problems.<sup>99</sup>

To date, none of these mechanisms has been genuinely engaged to prevent illegal HIV testing or other discrimination on the basis of HIV status. Paola Marte, from the HIV/AIDS Workplace Unit in the Ministry of Labor, told Human Rights Watch that the reason labor inspectors did not enforce the prohibition on HIV testing for access to work is that they have not received any training to do so.<sup>100</sup> However, the AIDS law provisions prohibiting HIV testing for work purposes have been in force for over a decade, are quite clear, and should have been implemented independently of any training. Moreover, the Dominican government has an obligation to provide the necessary training in a timely manner to ensure that domestic legislation is enforced.

Paola Marte noted that the hygiene and security committees are equally ill-equipped to deal with issues regarding HIV-related workplace discrimination, also due to lack of training.<sup>101</sup> By law, the Ministry of Labor must disseminate information regarding all relevant legal norms and regulations to the committees to ensure that these committees

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<sup>95</sup> Ley 16-92, Código de Trabajo (Law 16-92, Labor Code), May 29, 1992, articles 433 and 434.

<sup>96</sup> Bi-partite entities refer to entities with representatives from both the employer and the employees.

<sup>97</sup> Secretaría de Estado de Trabajo [Ministry of Labor], Dirección General de Higiene y Seguridad Industrial [Directorate for Industrial Hygiene and Security] “Reglamento sobre Higiene y Seguridad Industrial” [Rule on Industrial Hygiene and Security], Rule No. 807 (Santo Domingo: Secretaría de Estado de Trabajo, 1966), articles 68 to 74. The Directorate for Industrial Hygiene and Security has been replaced by the Directorate for Security and Health at Work.

<sup>98</sup> Ley 87-01 de Seguridad Social [Law 87-01 on Social Security], article 4.

<sup>99</sup> Ley 16-92, Código de Trabajo [Law 16-92, Labor Code], May 29, 1992, article 427. Article 427 establishes that the government may set up an office for legal assistance for workers and employers at its discretion.

<sup>100</sup> Human Rights Watch interview with Paola Marte, coordinator, HIV/AIDS Workplace Unit [Unidad VIH-SIDA en los Lugares de Trabajo], Ministry of Labor [Secretaría de Estado de Trabajo, SET], Santo Domingo, January 30, 2004.

<sup>101</sup> Human Rights Watch interview with Paola Marte, coordinator, HIV/AIDS Workplace Unit, Ministry of Labor, Santo Domingo, January 30, 2004.

are able to fulfill their monitoring role.<sup>102</sup> So far, according to a public official we spoke to, the Ministry of Labor has failed to provide information on the illegality of involuntary HIV testing to the committees.<sup>103</sup>

The legal assistance office could have brought cases of alleged discrimination in the workplace because of a worker's HIV status, but a staff lawyer from this office told Human Rights Watch that, to his knowledge, the office has had no such cases.<sup>104</sup> The office does not seek out cases proactively, and its success as an enforcement mechanism consequently depends on the general population knowing how and where to bring cases of alleged violations. Human Rights Watch interviews suggest that such knowledge was lacking. We interviewed many women living with HIV who had been tested as a condition to gain or retain work, and who had only learned later, from NGOs and HIV/AIDS support groups, that this kind of testing was illegal. We also spoke to several women who did not know where to make a complaint. This implies insufficient effort on the part of the government in conveying to the general public that job seekers and employees have a legal right to refuse HIV testing and that the Ministry of Labor provides legal assistance in cases of alleged discrimination.

The women we interviewed who did know about the law and thought they had legitimate claims of discrimination, moreover, did not press charges since this could potentially expose them as HIV-positive.<sup>105</sup> The United Nations International Guidelines on HIV/AIDS and Human Rights (U.N. Guidelines), which provide guidance in interpreting international legal norms as they relate to HIV and AIDS, counsel that "people living with HIV/AIDS should be authorized to demand that their identity and privacy be protected in legal proceedings in which information on these matters will be raised."<sup>106</sup> According to a public official we spoke to, no such possibility exists in the Dominican Republic.<sup>107</sup>

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<sup>102</sup> Secretaría de Estado de Trabajo, Dirección General de Higiene y Seguridad Industrial, "Reglamento sobre Higiene y Seguridad Industrial", article 74.

<sup>103</sup> Human Rights Watch interview with Paola Marte, coordinator, HIV/AIDS Workplace Unit, Ministry of Labor, Santo Domingo, January 30, 2004.

<sup>104</sup> Human Rights Watch phone interview with Israel González, lawyer, Department of Legal Assistance [Departamento de Asistencia Legal], Ministry of Labor, Santo Domingo, April 15, 2004.

<sup>105</sup> Human Rights Watch interviews with Sergia Báez, Santo Domingo, January 15, 2004; with Fatima Pérez, Santiago, January 19, 2004; with Alicia López, Santiago, January 19, 2004; with Sandra Vargas, Puerto Plata, January 22, 2004.

<sup>106</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *HIV/AIDS and Human Rights International Guidelines* (from the second international consultation on HIV/AIDS and human rights 23-25 September 1996, Geneva) (hereinafter U.N. Guidelines) (Geneva: UNAIDS, 1998), U.N. Doc. HR/PUB/98/1, para. 30(c).

<sup>107</sup> Human Rights Watch phone interview with Israel González, lawyer, Department of Legal Assistance, Ministry of Labor, Santo Domingo, April 15, 2004.

Spurred by international funding, the Dominican Republic government recently embarked upon a much needed project to address HIV/AIDS in the workplace. In 2002, a coalition of public and private agencies, including the Ministry of Labor, the Ministry of Health, the Institute for Technical and Professional Training, the Dominican Social Security Institute, the Employers Confederation, the Presidential AIDS Council, the NGO Coalition on AIDS, and the National Trade Union Council came together with SMARTWork, an organization funded by the U.S. Department of Labor, to sign the Multisectoral Collaborative Agreement for HIV/AIDS Workplace Prevention. The agreement required signatories to develop plans that specify how each agency or organization would address the HIV/AIDS epidemic in the workplace in the Dominican Republic. As one of the signatories, the Ministry of Labor developed and published its four-year plan in May 2003. The stated objective of the plan is to “[p]romote healthy and decent work through the adoption of policies and programs for the prevention of HIV/AIDS in companies.”<sup>108</sup> In late 2003, the Ministry of Labor started implementing a small part of this project through the training of labor inspectors in HIV/AIDS prevention and monitoring. As of mid-April 2004, half of the eighty-plus inspectors in the capital had been trained, though none were based outside the capital. This is an important step in the right direction.

There is no plan, however, to improve the ministry’s response to violations of the domestic AIDS law with regard to illegal HIV testing. Government officials and NGO representatives confirmed that ministry inspectors will not at this point be trained on the imperative to investigate and sanction companies that conduct HIV testing as a condition to gain or retain employment.<sup>109</sup>

## **V. Women’s Rights Violations in the Health Care System**

The public health care system in the Dominican Republic does not adequately protect the human rights of women living with HIV or AIDS or women who attend prenatal health care generally. Women interviewed by Human Rights Watch described three particularly persistent violations: inadequate HIV counseling, which prevents women from being able to exercise their right to informed consent on issues of testing and

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<sup>108</sup> Secretaría de Trabajo, *Plan de Trabajo de la SET para la Prevención del VIH/SIDA en Lugares de Trabajo, Período 2003-2007* [Work plan for the Ministry of Labor for the Prevention of HIV/AIDS in the Workplace] (Santo Domingo: Secretaría de Trabajo, May 2003), unpublished document on file with Human Rights Watch, p. 3.

<sup>109</sup> Human Rights Watch interview with Paola Marte, coordinator, HIV/AIDS Workplace Unit, Ministry of Labor January 30, 2004; and Human Rights Watch interview with Elizardo Puello, executive director, Coordination Board for Socio-Cultural Activity (Coordinadora de Animación Socio-Cultural, CASCO), January 7, 2004.

treatment; routine unauthorized release of confidential HIV test results; and decisions by doctors to carry out, postpone, or withhold medical procedures without properly informing the woman or obtaining her prior consent. These different types of abuse constitute human rights violations in and of themselves. In a context of severe sex inequality and social subordination of women, they exacerbate each other as well as the stigma and discrimination faced by women living with HIV.

Women told us they were tested for HIV when they received health care services unrelated to HIV or AIDS, despite the fact that domestic law prohibits this practice.<sup>110</sup> Several women told Human Rights Watch that doctors and other health care professionals demanded HIV test results before administering services. Women who were tested for HIV when they used government prenatal care often received little or no counseling, in violation of domestic norms and international guidelines. Women we interviewed told us that doctors and other health professionals released their HIV test results to spouses, family members, neighbors, friends, or others, without their knowledge or authorization. Human Rights Watch also spoke to a number of HIV-positive women who said they had been sterilized because of their HIV status without receiving full information about their rights and choices, and thus without their informed consent. The case of Isabel Guzmán, briefly recounted below, illustrates many of these violations.

Guzmán, a shy twenty-one-year-old, came to the interview with Human Rights Watch with her two-month-old son and seemed surprised that anyone would take an interest in her life. Guzmán had married a twenty-seven-year-old man when she was fifteen. She has one son from this marriage. The headmaster of the public school she attended at the time told her that married women were allowed to attend classes only on Sundays, and she consequently never graduated from high school.<sup>111</sup> Her husband died, she believes from AIDS, some years ago. She then married another man, who physically abused her on a regular basis: “He hit me many times. Almost every week.” However, she was not able to ask for condom use because “my husband thinks I have another man.”<sup>112</sup> The attacks continued even after she learned she was pregnant again: “He attacked my stomach when I was pregnant, my face, my back, with his fists.”

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<sup>110</sup> Ley 55-93 sobre SIDA [AIDS law], article 3. Article 3 of the AIDS law prohibits HIV testing “for reasons related to health service: when the test results condition the care the patient will receive.”

<sup>111</sup> According to Irma Levasseur from the Ministry of Education, this is illegal though not uncommon: “A [married] pupil cannot be expelled [or compelled to attend school on a different schedule.] ... [The headmasters] know that. But the same headmasters have inadequate attitudes that lead them to make wrong decisions. We have had many problems with that.” Human Rights Watch interview with Irma Levasseur, director, Department of Orientation and Psychology, Ministry of Education, January 29, 2004.

<sup>112</sup> Human Rights Watch interview with Isabel Guzmán, Santiago, January 17, 2004.

Guzmán found out that she was HIV-positive during this second pregnancy when doctors at the public hospital tested her as part of prenatal routine care, without counseling and without obtaining her consent. The doctors informed Guzmán that she would have to have a cesarean section to avoid transmitting the virus to her child. She reported, however, that her doctors then began delaying and refused to see her until she was nine centimeters dilated, too late for a cesarean section. She explained what happened when she gave birth:

*[Because I was HIV positive] I had to clean myself alone. They did not clean the baby. My mother cleaned him. ... One nurse did not want to inject me. She told my mother she did not want to [because I was HIV-positive].*<sup>113</sup>

When we talked to Guzmán in January 2004 she had recently separated from her second husband, and was struggling to make ends meet for herself and her two children.

### ***Inadequate HIV Counseling and Testing without Informed Consent***

*The people in charge of the program [to prevent parent-to-child HIV transmission] tell us not to give all the information [because they say it might confuse women]. Maybe 2 percent [of the women] are given all ALL the information. In fact, the other day there was a [pregnant] woman who said to me: "For my child, I will do anything. But they have to give me all the information."*

—HIV/AIDS counselor<sup>114</sup>

Many women told Human Rights Watch that they were tested for HIV as part of prenatal care without any counseling at all, or that pre- or post-test counseling was insufficient to allow them to make informed choices about HIV testing and subsequent treatment or procedures, as required by international law and generally accepted medical ethics.<sup>115</sup> Several women also told Human Rights Watch that doctors and other health

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<sup>113</sup> Ibid.

<sup>114</sup> Human Rights Watch with [name withheld], HIV counselor at public hospital, Santiago, January 19, 2004.

<sup>115</sup> Rebecca Cook, Bernard M. Dickens, and Mahmoud F. Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford: Clarendon Press, 2003), p. 109. Committee on Economic, Social and Cultural Rights, *The right to the highest attainable standard of living (General Comments), General Comment 14*, August 11, 2000, U.N. Doc. E/C.12/2000/4, para. 37 (referring to a State obligation to support people in making informed choices).

care professionals demanded HIV test results before administering health care services unrelated to HIV or AIDS, despite the fact that domestic law prohibits this practice.<sup>116</sup>

The lack of adequate—in many cases, any—pre- and post-test counseling may be one of the greatest shortcomings of the Dominican Republic’s program to reduce the risk of parent-to-child HIV transmission as currently implemented.<sup>117</sup> In 2003, an estimated 31 percent of the women who attended public prenatal health services were given pre-test counseling, though 50 percent of all women were tested for HIV.<sup>118</sup> This means that over 28,000 women were tested in 2003 without any form of formal pre-test counseling.<sup>119</sup>

Catarina Torres, twenty-five years old, was tested at a public hospital in Santo Domingo when she was seven months pregnant in 2002. Medical personnel informed her that she would be tested for HIV, but she did not receive counseling and was not asked for her consent.<sup>120</sup> Gabriela López, twenty-four years old, told Human Rights Watch that she had been tested for HIV during a prenatal health care visit at the public hospital in La Romana in 2003 without any pre-test counseling and without medical personnel informing her of her HIV status. She later received post-test counseling, though only because medical personnel at the public hospital referred her for further prenatal care to a private clinic with an internationally funded program to prevent parent-to-child HIV transmission: “They sent me to the private clinic [without giving me a reason]. That’s where they [finally] told me that I was HIV-positive.”<sup>121</sup>

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<sup>116</sup> Ley 55-93 sobre SIDA [AIDS law], article 3. Article 3 of the AIDS law prohibits HIV testing “for reasons related to health service: when the test results condition the care the patient will receive.”

<sup>117</sup> The protocol of the Dominican program to prevent parent-to-child HIV transmission prescribes voluntary HIV testing of pregnant women during prenatal medical checkups, preceded and followed by counseling, antiretroviral medication (nevirapine) in a single dose to the pregnant woman immediately before birth (vaginal or cesarean section), scheduled elective cesarean section at thirty-eight weeks of gestation, antiretroviral medication (nevirapine) in a single dose to the infant within seventy-two hours of birth, and the provision of breastmilk substitute formula and bottles. If fully implemented, international research suggests that this kind of protocol has the potential to reduce the risk of parent-to-child transmission by more than 50 percent. Joint United Nations Programme on HIV/AIDS (UNAIDS), “Progress Report on the Global Response to the HIV/AIDS Epidemic, 2003,” p. 64.

<sup>118</sup> María Isabel Tavarez, general coordinator, National Program for Comprehensive Care of Persons Living with HIV/AIDS, Ministry of Public Health and Social Support, “Programa Nacional de Reducción de la Transmisión Vertical del VIH” (National Program to Reduce the Vertical Transmission of HIV), Powerpoint presentation to CENISMI, dated January 2004, on file with Human Rights Watch, slide 28.

<sup>119</sup> *Ibid.*

<sup>120</sup> Human Rights Watch interview with Catarina Torres, Santo Domingo, January 30, 2004.

<sup>121</sup> Human Rights Watch interview with Gabriela López, La Romana, January 13, 2004. The MTCT program at this private clinic in La Romana receives funding from Columbia University, New York. Human Rights Watch phone interview with Elaine Abrams, deputy director, Mother-to-Child-Transmission Plus Initiative, Mailman School of Public Health, Columbia University, New York, April 14, 2004.

Women who are hospitalized for childbirth without prior prenatal care often are not told that they have been tested for HIV until after childbirth.<sup>122</sup> For example, Dominga García, twenty-six years old, was tested for HIV immediately before childbirth at a public hospital in San Pedro de Macorís in 2003. When she arrived at the hospital, García's blood was drawn without her knowing why. After she gave birth, a nurse told her that she could not breastfeed her child, without any explanation. Only at this point was she sent to receive counseling, and at no point was she asked to sign a testing consent form.<sup>123</sup>

Some women told Human Rights Watch that they avoid even essential health services because they do not want to be tested for HIV, potentially to the serious detriment of their health. Ana María Varias, a forty-two-year old woman with a severely swollen lower abdomen, was diagnosed with an ovarian cyst in early 2003. "They don't operate if there is no [HIV test] result," she told Human Rights Watch. She explained that she refused the test, fearing the consequences for her if she were found positive and the results were leaked to her partner and family. As a result, Varias never scheduled follow-up health care services, and consequently, almost a year after the diagnosis, had not had the cyst removed.<sup>124</sup>

The administration of inadequate pre- and post-HIV-test counseling constitutes a severe limitation on the human right to receive essential information on health, and substantially limits HIV prevention because such counseling is essential in helping women prevent sexual transmission.<sup>125</sup> According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), the right to the enjoyment of the highest attainable standard of health includes the "right to seek, receive and impart

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<sup>122</sup> The national program to reduce the risk of parent-to-child HIV transmission establishes that a woman whose HIV status is unknown when she arrives at a hospital and clinic for childbirth in an "emergency" can be tested for HIV without pre-test counseling and with oral consent to the testing. E-mail message from Eddy Pérez-Then, deputy executive director, National Research Center on Maternal and Child Health (Centro Nacional de Investigaciones en Salud Materno-Infantil, CENISMI) to Human Rights Watch, February 27, 2004; and Secretaría de Estado de Salud Pública y Asistencia Social, *Programa Nacional de Reducción de la Transmisión Vertical del VIH/SIDA República Dominicana*.

<sup>123</sup> Human Rights Watch interview with Dominga García, San Pedro de Macorís, January 14, 2004.

<sup>124</sup> Human Rights Watch interview with Ana María Varias, San Pedro de Macorís, January 14, 2004.

<sup>125</sup> ICESCR, article 12. Article 12 reads: "1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness."

information concerning health issues<sup>126</sup> and a positive obligation for states to take steps necessary for the “prevention, treatment and control of epidemic, occupational, and other diseases.”<sup>127</sup> In order to fully implement these obligations with regard to HIV/AIDS, the U.N. Guidelines advise that “public health legislation ... [should] ensure, whenever possible, that pre- and post-test counseling be provided in all cases”<sup>128</sup> because counseling ensures the voluntary nature of HIV testing and contributes to the effectiveness of subsequent care or HIV prevention.

Our research indicates that the counseling women receive in the public health care system in the Dominican Republic is insufficient on both counts: it fails to equip women with the information necessary for them to give informed consent to testing and treatment, and it fails to give them the information they need to protect themselves from sexual transmission in the future.

This latter point is critical: the preventive potential of voluntary counseling and testing programs can be fulfilled only if women are given the information they need to make informed decisions about behaviors and treatment options. Research from Africa and the Caribbean has shown that the voluntary counseling and testing component of HIV prevention policies is highly efficient in reducing high-risk behavior, such as unprotected intercourse.<sup>129</sup> This is particularly true where counseling addresses gender inequality and relationship dynamics, notably through couple counseling and combined with community education.<sup>130</sup>

In 2001, UNAIDS published a paper that illustrates several central issues related to voluntary HIV counseling and testing for pregnant women (UNAIDS Prenatal HIV Testing Paper), with special emphasis on the feasibility of providing such services in

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<sup>126</sup> Committee on Economic, Social and Cultural Rights, *The right to the highest attainable standard of living (General Comments)*, General Comment 14, August 11, 2000, U.N. Doc. E/C.12/2000/4, para. 12(b)(iv).

<sup>127</sup> Committee on Economic Social and Cultural Rights, *The right to the highest attainable standard of living (General Comments)*, General Comment 14, para. 16.

<sup>128</sup> U.N. Guidelines, para. 28(c).

<sup>129</sup> The voluntary HIV-1 Counseling and Testing Efficacy Study Group, “Efficacy of voluntary HIV-1 counseling and testing in individuals and couples in Kenya, Tanzania, and Trinidad: a randomized trial,” *The Lancet*, July 8, 2000, pp. 102-112.

<sup>130</sup> See Thomas M. Painter, “Voluntary counseling and testing for couples: a high-leverage intervention for HIV/AIDS prevention in sub-Saharan Africa,” *Social Science & Medicine* 53 (2001), pp. 1397-1411 (citing relevant studies); and S. Maman et al, “Women’s barriers to HIV-1 testing and disclosure: challenges for HIV-1 voluntary counseling and testing,” *AIDS Care*, Vol. 3, No. 5 (2001), pp. 595-603.

developing countries with high HIV prevalence.<sup>131</sup> The UNAIDS Prenatal HIV Testing Paper notes that pre-test counseling should include information on the potential negative reactions of families and long-term partners upon learning an individual's HIV-status.<sup>132</sup> These consequences potentially include ostracism, divorce and discrimination. Both the UNAIDS paper and a similar document published by the World Health Organization in 1999 discourage pressuring women into being tested for HIV—whether explicitly or implicitly by only presenting the advantages to women's knowing their HIV status—since being tested and having their HIV status known may compromise the safety and health of the women and their dependents.<sup>133</sup>

The analyses summarized above are particularly pertinent in the Dominican Republic, where our research indicates that unauthorized release of confidential HIV test results is common. In combination with the government's failure to address endemic violence against women, entrenched sex inequality, and a strong social bias against condom use, the issue of informed consent is particularly critical to women. The testimony of Clara Pérez, twenty-eight, illustrates the consequences that can ensue when inequality in the home combines with inadequate pre-test counseling and breaches of confidentiality.

Clara Pérez told Human Rights Watch that she contracted HIV from her husband, who refused to use condoms. "I asked him please to wear one. ... He didn't want to. ... He was running around [i.e. having sex] with other women." She learned that she was HIV-positive when she was tested during her three-month prenatal check-up in 2002 at a public hospital in Santo Domingo; she received no pre- or post-test counseling. After struggling with the news, she decided to tell her husband she was HIV-positive, in part "to avoid rumors" because "there was a nurse who lived in the neighborhood ... who was talking [telling others about my HIV status]." Her husband insisted that he did not want to be tested for HIV. "He said: 'No, it is a lie.'" Pérez said that the relationship deteriorated quickly: "After I knew, the fights began—many, many fights." Pérez subsequently separated from her husband and has been unable to find employment due to her HIV status.<sup>134</sup>

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<sup>131</sup> Joint United Nations Programme on HIV/AIDS, *Counseling and voluntary HIV testing for pregnant women in high HIV prevalence countries: Elements and issues* (hereinafter UNAIDS Prenatal HIV Testing Paper) (Geneva: UNAIDS, October 1999), Revised reprint November 2001, UNAIDS/01.70E.

<sup>132</sup> *Ibid.*, p. 9.

<sup>133</sup> *Ibid.*, p. 17; and World Health Organization, HIV/AIDS and Sexually Transmitted Infections Initiative, *Voluntary Counseling and Testing for HIV Infection in Antenatal Care, Practical Considerations for Implementation*, (Geneva: World Health Organization, September 1999), p. 15

<sup>134</sup> Human Rights Watch interview with Clara Pérez, Santo Domingo, January 15, 2004.

The Dominican Republic's national norms for HIV/AIDS counseling do not mention the necessity to help individuals assess and overcome potential adverse reactions—including violence—when the test results are revealed to the individual's sexual partners, as mandated by law.<sup>135</sup> Counselors are encouraged to evaluate whether or not it is the right time to inform an individual of his or her HIV status,<sup>136</sup> but not to help the individual evaluate whether it is the right time to be tested at all. In other words, the norms on counseling essentially appoint the counselor guardian of the tested person's welfare. An HIV counselor at the public hospital in Santiago told Human Rights Watch that most women, in general, did not receive full information regarding HIV testing and choices regarding available procedures.<sup>137</sup>

### **Unauthorized Release of Confidential HIV Test Results**

*Three months ago, I gave birth. They did a test on me, then after I gave birth they came to tell me that I could not breastfeed. The doctor said I had to bring in my husband. They told me with my husband there. They had told him [that I was HIV-positive] before they told me.*

—Jessica Torres, twenty years old<sup>138</sup>

Human Rights Watch found that medical and other personnel at both public and private hospitals often released confidential HIV test results without the authorization or even knowledge of the tested individual. An HIV counselor at a public hospital in Santiago noted that the release of confidential HIV test results was common despite training: “It happens often that confidentiality is breached. We have given so many workshops, and still doctors think they can decide for another person.”<sup>139</sup> Such breaches are contrary to the right to privacy.<sup>140</sup> For women, confidentiality of medical information, such as HIV status, is essential to the protection of their human rights generally, because women may find themselves abandoned, subject to domestic violence, or ostracized if their domestic partners, families or communities discover that they are HIV-positive.

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<sup>135</sup> Ley 55-93 sobre el SIDA [AIDS law], article 21.

<sup>136</sup> Secretaría de Estado de Salud Pública y Asistencia Social, *Normas Nacionales para la Consejería en ITS/VIH/SIDA*, p. 36.

<sup>137</sup> Human Rights Watch with [name withheld], HIV counselor at public hospital, Santiago, January 19, 2004.

<sup>138</sup> Human Rights Watch interview with Jessica Torres, San Pedro de Macoris, January 14, 2004.

<sup>139</sup> Human Rights Watch with [name withheld], HIV counselor at public hospital, Santiago, January 19, 2004.

<sup>140</sup> ICCPR, article 17. For text of article 17, see footnote 88.

In the context of HIV/AIDS, protection of the right to privacy is also vital to enable women to consent to HIV tests and treatment for themselves and their infants without fear of their long-term sex partners' reactions. The need for stringent confidentiality measures is exacerbated in the Dominican context where the lack of shelters for victims of domestic violence and the failure to counsel women adequately with respect to their rights and choices compound the risk of abuse when women are known to be HIV positive. Research from Africa indicates that the fear of disclosure of HIV status is one of the main barriers to women's use of voluntary counseling and testing services, and that this fear "reflect[s] the unequal and limited power that many women have to control their risk for infection."<sup>141</sup> The UNAIDS Prenatal HIV Testing Paper cautions that women are unlikely to want to be tested for HIV if their confidentiality is not properly guaranteed, including against sharing HIV test results among health workers.<sup>142</sup>

The testimonies of Rosa Polanco, thirty-four, and Dominga Céspedes, thirty, are a few among the many we collected that clearly illustrate the disastrous consequences for women of breaches of confidentiality. In the cases described below, the consequences were exacerbated by the lack of any pre- or post-test counseling that could have helped the women reduce the abuses and stigma they subsequently faced.

Polanco was tested for HIV when she was hospitalized with a liver disease. "There was one doctor, very rude. He said 'What you have is AIDS, because you weren't careful' in front of my daughters." As a consequence of the disclosure of her HIV status to her family, Polanco was thrown out of her home by her mother. She moved to a makeshift wooden shack without sanitation, electricity, or running water, in a part of Santiago dubbed "the Part Behind" ("*La Parte Atrás*") by locals. She said:

[When I lived at home] I had to clean the bathroom whenever I used it, I had to wash my plates separately. [My mother] told me not to touch my children. She threw me out. My uncle gave me some land where I built a shack ... without water, without light, without a [constructed] floor. ... I have to do my necessities in a bucket and throw it out close by.<sup>143</sup>

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<sup>141</sup> S. Maman et al, "Women's barriers to HIV-1 testing and disclosure: challenges for HIV-1 voluntary counseling and testing," *AIDS Care*, Vol. 13, No. 5, p. 601.

<sup>142</sup> UNAIDS Prenatal HIV Testing Paper, p. 8.

<sup>143</sup> Human Rights Watch interview with Rosa Polanco, Santiago, January 17, 2004.

Dominga Céspedes, thirty years old, was pregnant with her third child when health workers at a public hospital tested her for HIV without her consent and then released her HIV test results to her family without her authorization or knowledge. “They didn’t say they were going to [do an HIV test], they just took the blood, then they called my house and told my mother-in-law that I have HIV.” Céspedes had decided to get sterilized after this third child, but was afraid to go back to the hospital for fear of further violations of her privacy. Despite knowing her HIV status, her husband did not want to use condoms, and she was unable to use any other form of contraceptive: “I tried to protect myself, but as I told you, he didn’t like [condoms]. He forced me. I vomited from the [contraceptive] pill.” Céspedes had two more children.<sup>144</sup>

Human Rights Watch gathered evidence to suggest that some health workers treated women as if they were incapable of handling the information about their HIV status, thereby presumably justifying the release of confidential HIV test results. Rosa Lantigua, forty-two years old, explained that a doctor gave her HIV test result to her sister, without Lantigua’s consent because “sometimes doctors don’t like giving the result to the [tested] individual. They think the individual can’t take [the news], so they give [the test result] to someone else.”<sup>145</sup> Likewise, the counselor at the public hospital told Yesfanil Almonte, twenty-four years old, that they did not want to give her the results of her HIV test, and that she needed to send a friend or a family member to get them.<sup>146</sup> These misguided practices neither spare the feelings nor protect the human rights of women living with HIV. Moreover, when health personnel effectively appoint themselves guardians for women living with HIV, they essentially relegate these women to the position of minors, thereby reinforcing the existing culture of social control and sex inequality.

Doctors and other health personnel in other cases we documented released confidential HIV test results for no apparent reason. María Pérez, twenty-eight years old, had not disclosed her HIV status to the friend who accompanied her to the public hospital to give birth. “I had a friend, when I was hospitalized, I didn’t tell him, he went to the hospital, and they said ‘are you her husband?’ He said yes, and they said ‘they haven’t given her the cesarean section yet, because she is HIV-positive.’”<sup>147</sup>

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<sup>144</sup> Human Rights Watch interview with Dominga Cespedes, La Romana, January 12, 203304.

<sup>145</sup> Human Rights Watch interview with Rosa Lantigua, Puerto Plata, January 20, 2004.

<sup>146</sup> Human Rights Watch interview with Yesfanil Almonte, Puerto Plata, January 24, 2004.

<sup>147</sup> Human Rights Watch interview with María Pérez, Puerto Plata, January 21, 2004.

Alicia López, twenty-three years old, had specifically told the doctor at the public hospital in Santiago that she did not want her family to know her HIV test results. She said:

[The doctor] came to give me a blood test. On my papers it said that I have HIV. He asked me if my family knew, and I said no, that they were not ready. [The next day] they gave me the medicine for the cesarean section.<sup>148</sup> In that time, [the doctor] went to the room and told a friend of mine [that I was HIV-positive] without my consent. Without my authorization. I found out [the day after] in the morning, because my sister told me [that my friend had later told my neighbor]. My neighbor had [then] told my mother. I had told [the doctor] that the only person who knew [that I was HIV-positive] was my sister, and I did not give him my authorization [to release my test results to anyone else].<sup>149</sup>

In the case of Rosalia Rodríguez, twenty-seven years old, public hospital nurses “put HIV in red on my record on my bed,” leaving no doubt as to her status: “All of the personnel [knew]. How could they not know, with that sign?”<sup>150</sup>

The testimony of twenty-two-year-old Alesandra Ebrito illustrates how the release of confidential HIV test results, in combination with a general lack of protection of the rights of people living with HIV, creates a situation in which tested individuals are denied other rights, such as freedom from discrimination on the basis of HIV status in access to health care services, or stop seeking work due to a general sense of disempowerment. Ebrito already suspected that she might be HIV-positive when she went to get tested. Her husband had died some years back, and she wanted to know her HIV status. “I did the test in 2003. I filled myself with courage. ... My gynecologist revealed [my HIV status] to the director of the factory [where I worked]. I left work voluntarily because she was going to [fire me]. The doctor [gynecologist] refused to treat me.”<sup>151</sup>

Many NGO workers and health care providers expressed concern about the widespread and serious nature of breaches of HIV test confidentiality standards. Interviewees who

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<sup>148</sup> Refers to nevirapine, see footnote 116.

<sup>149</sup> Human Rights Watch interview with Alicia López, Santiago, January 19, 2004.

<sup>150</sup> Human Rights Watch interview with Rosalia Rodríguez, Santo Domingo, January 15, 2004.

<sup>151</sup> Human Rights Watch interview with Alesandra Ebrito, San Pedro de Macorís, January 14, 2004.

worked as HIV/AIDS counselors in hospitals where the national program to reduce the risk of parent-to-child HIV transmission was implemented spoke of careless disclosure in hospital hallways. Rosario Almonte recalled: “When I was a counselor [in 2003] sometimes they would shout in the hallway ‘there is that AIDS patient who is looking for you.’”<sup>152</sup> Some counselors are persons living with HIV, some are training nurses or psychologists. All are supposed to have received a short course of training organized by the Ministry of Health, covering the national norms on HIV counseling and the content of the program to prevent parent-to-child HIV transmission.<sup>153</sup>

### **Medical Procedures Withheld, Delayed, or Administered Under Pressure**

*They asked me if I wanted to be sterilized, and I said yes. I filled out the form. When I was in the operation room, they asked me again, and I said no. But the other doctor said “no, sterilize her once and for all, she can’t have any more children.”*  
—Jessica Fernández, twenty-three years old<sup>154</sup>

Several women living with HIV in the Dominican Republic reported that medical personnel arbitrarily withheld or postponed medical procedures because of their status or that they were unduly pressured to undergo certain medical procedures, in particular sterilization, because they were HIV-positive. The care HIV-positive women received at any given time depended on the attitudes of the particular health care personnel who attended to them or on the prevailing policy at the clinic, hospital, or department in which they happened to be seeking care. The treatment the women we spoke to received was in some cases clearly inconsistent with the right to the highest attainable standard of health without discrimination of any kind, as guaranteed by articles 2(2) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>155</sup>

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<sup>152</sup> Human Rights Watch interview with Rosario Almonte [not her real name], former HIV/AIDS counselor, La Romana, January 13, 2004.

<sup>153</sup> Human Rights Watch interview with José Antonio Matos, deputy director, Maternal-Infant Health Program, Ministry of Public Health and Social Support, Santo Domingo, January 27, 2004.

<sup>154</sup> Human Rights Watch interview with Jessica Fernández, Santiago, January 19, 2004.

<sup>155</sup> ICESCR, arts. 2(2) and 12. For full text of article 2(2), see footnote 58. Article 12 reads: “1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

To our knowledge, the Dominican state has not sanctioned medical personnel who discriminate against HIV-positive women.

Human Rights Watch interviewed NGO workers with years of experience working with women living with HIV/AIDS in the Dominican Republic who told us that doctors or nurses sometimes imposed a “decision” to sterilize women living with HIV, and that women were given inadequate or misleading information about the benefits or drawbacks of sterilization procedures. Notably, NGO workers recounted from personal experience that some women were confronted with the possibility—sometimes phrased as a “necessity”—of undergoing sterilization immediately after receiving the information about their HIV-positive status, i.e. in circumstances not conducive to independent decision-making due to the emotional stress the women were facing.<sup>156</sup>

Human Rights Watch interviewed a small number of women who—due to their HIV-positive status—were pressured into being sterilized, or felt they had insufficient or inadequate information about their options concerning sterilization. A doctor at the local public hospital told Juana Díaz, twenty years old, during a prenatal visit that she was going to be sterilized because of her HIV status. Since Díaz was eighteen years old at the time, the doctor explained that her mother’s permission was necessary. The doctor did not tell her that she could refuse sterilization. After her mother signed the form, one day before the scheduled procedure, a local NGO worker told Díaz that she did not need to be sterilized. At the time, Díaz was afraid of the health consequences of another pregnancy, and therefore signed a consent form herself. She told Human Rights Watch she regretted this and she felt she was told too late that she had a choice.<sup>157</sup> If it had not been for the NGO worker who told her that it was not necessary for her to undergo sterilization, she might not have known at all.

Rebeca Pérez, thirty-nine years old, had a similar experience. “The sterilization was forced on me. ‘You can’t have any more children [because you have HIV].’ I accepted because I did not know, because I was perplexed, on top of this pregnancy with HIV. I said yes, sterilize me, but without any mental presence.” Pérez, who worked as a nurse at a public hospital until one year earlier, noted that, in her experience, the introduction of the program to reduce the risk of parent-to-child HIV transmission had not helped

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<sup>156</sup> Human Rights Watch interviews with César Castellanos, associate researcher, National Health Institute [Instituto Nacional de la Salud, INSALUD], Santo Domingo, January 9, 2004; with Felipa García, president, Solidarity Alliance for the Fight Against AIDS [Alianza Solidaria Para la Lucha Contra el Sida, ASOLSIDA], Santo Domingo, January 7, 2004; and with César Rosario, associate, Dominican Human Rights Committee [Comité Dominicano de Derechos Humanos], Santo Domingo, January 9, 2004.

<sup>157</sup> Human Rights Watch interview with Juana Díaz, Santo Domingo, January 30, 2004.

this situation. “When they started the MTCT program, doctors [still] obligated women [to get sterilized]. Doctors said, ‘we have to sterilize them.’”<sup>158</sup>

There is no medical or epidemiological justification for pressuring women living with HIV into being sterilized. The benefit in terms of prevention and control of the spread of HIV is minimal. As a practical matter, the sterilization of women who are HIV positive does not prevent them from engaging in risky sexual behavior, and therefore does not prevent them from transmitting HIV to sexual partners, or from being reinfected themselves. Indeed, sterilization may further undermine a woman’s power to negotiate condom use because condoms will no longer be necessary for contraceptive purposes.

Other women we met were refused access to certain medical procedures or received care with considerable delay. This was particularly true for interventions that require surgery, such as cesarean sections.<sup>159</sup> Rosalia Rodríguez, twenty-seven years old, was refused adequate care at a public hospital in Santo Domingo in 1999:

I gave them the test result, and they did not want to treat me... They had me go into labor, and nothing, no one attended to me. ... I fell on the floor, and no one caught me. The cleaning lady caught me finally. They did not even clean my baby, in the beginning they wouldn’t let me see him. They brought him to me all dirty. I knew it was because of this [my HIV status].<sup>160</sup>

HIV-positive women whom we interviewed told us that they were made to wait for cesarean sections until all HIV-negative women have been operated upon.<sup>161</sup> This was

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<sup>158</sup> Human Rights Watch phone interview with Rebeca Pérez, Santo Domingo, January 30, 2004.

<sup>159</sup> The Dominican Republic’s national program to reduce the risk of parent-to-child HIV transmission sets as a specific goal that 100 percent of mothers living with HIV should give birth by cesarean section. Secretaría de Estado de Salud Pública y Asistencia Social, *Programa Nacional de Reducción de la Transmisión Vertical del VIH/SIDA República Dominicana*, p. 10 and p. 29. According to Alan Berkman, who serves as a consultant to Columbia University’s MTCT Plus Initiative, this policy to encourage all pregnant women living with HIV to undergo cesarean sections is an anomaly. Berkman further told Human Rights Watch that the insistence on cesarean sections in the Dominican Republic might present a substantial ethical problem if women were not properly briefed about both the risks and the advantages associated with undergoing cesarean sections. Human Rights Watch phone interview with Alan Berkman, assistant professor, Columbia University, April 29, 2004.

<sup>160</sup> Human Rights Watch interview with Rosalia Rodríguez, Santo Domingo, January 15, 2004.

<sup>161</sup> Doctors face a real risk of HIV transmission when they carry out surgical interventions on persons living with HIV. The Dominican Republic’s national norms on care for sexually transmitted infections set out procedures for minimizing the exposure to this risk. The norms do not mention post-exposure prophylaxis (PEP), a short and affordable course of antiretroviral drugs to reduce the risk of HIV transmission following exposure to HIV.

the experience of Maria Báez, thirty-four years old, at the public hospital in Santiago: “Generally, at the hospital when you come with HIV, they treat you badly. Even if you come first, they give you the cesarean section last. I had to wait twenty-four hours after I had my appointment to have my cesarean section. They demanded that I buy [surgical] clothes for the doctors. [It cost me] more than 500 pesos [U.S.\$29]<sup>162</sup> one year and a half ago.”<sup>163</sup>

Guadalupe Torres, who gave birth at the same hospital, had to wait twelve hours for her cesarean section.<sup>164</sup> HIV/AIDS counselors and NGO workers said that this was a common practice at hospitals throughout the Dominican Republic, and that it targeted only women living with HIV.<sup>165</sup> Rosario Almonte, who worked as an HIV/AIDS counselor at a public hospital until last year, remarked: “They say that they carry out cesarean sections [on all HIV-positive pregnant women], but it is not true, because I had to receive some children, they did not even want to touch them. ... The [hospital] director says that he can’t make the doctors do it.”<sup>166</sup> Dr. Sams Faulkner, an independent medical doctor who treats women living with HIV, agreed: “I know women who have given birth in public hospitals without medicine [nevirapine] or have given birth vaginally [not by choice]. ... The other day, a woman came, she had given birth a month ago, and she had none of all that [referring to being offered nevirapine and cesarean section.]”<sup>167</sup>

A Health Ministry official acknowledged to Human Rights Watch that the program to reduce parent-to-child HIV transmission had initially struggled with problems regarding doctors refusing to carry out certain procedures. He maintained, however, that this was a thing of the past. “There have been doctors who refused to do cesarean sections. We

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Secretaría de Estado de Salud Pública y Asistencia Social, *Normas y Procedimientos Nacionales para las Atención de las Infecciones de Transmisión Sexual (ITS)*, pp. 43-44. Some delay may be caused by the implementation of these procedures.

<sup>162</sup> The exchange rate used is seventeen Dominican pesos to one U.S. dollar, the average rate in 2002.

<sup>163</sup> Human Rights Watch interview with Maria Báez, Santiago, January 19, 2004.

<sup>164</sup> Human Rights Watch interview with Guadalupe Torres, Santiago, January 19, 2004.

<sup>165</sup> Human Rights Watch interviews with Felipa García, president, Solidarity Alliance for the Fight Against AIDS (Alianza Solidaria Para la Lucha Contra el Sida, ASOLSIDA), Santo Domingo, January 7, 2004; with Dulce Almonte, Dominican Network of Persons Living with VIH (Red Dominicana de Personas que Viven con VIH/SIDA, REDOVIIH), Santo Domingo, January 8, 2004; and with Norka Knight, psychologist, Fundación Mir, La Romana, January 13, 2004.

<sup>166</sup> Human Rights Watch interview with Rosario Almonte, La Romana, January 13, 2004.

<sup>167</sup> Human Rights Watch interview with H. Sams Faulkner, medical doctor, Christian Medical Center (Centro Médico Cristiano), La Romana, January 13, 2004.

asked them to resign or accept. There was a hospital in Puerto Plata, and I had to go personally to do a cesarean section to show them it was not risky,” he said.<sup>168</sup>

In some cases, the discriminatory care women expect and receive in the health care system discouraged them from seeking vital medical care during their pregnancy, to the potential detriment of their health and that of their child. Yolanda Pie did not return for regular prenatal checkups after she was subjected to HIV testing without consent at her three-month checkup at a public hospital in Santo Domingo in 2003. “When I went back with labor pains, there was no time for a cesarean section, he [the doctor] turned his back on me [and said] ‘I don’t want to be infected.’ When the baby was just about to fall on the floor, he caught him underneath. ... They did not clean me or anything. It’s as if you are a dog.”<sup>169</sup>

### **Government Response**

The Dominican Republic is not doing nearly enough to address the pervasive women’s rights violations described above. Although a large proportion of the Dominican women who are tested for HIV do not receive pre- or post-test counseling, government officials told Human Rights Watch that no specific budget was allocated to centers for voluntary HIV counseling and testing, and that most of the existing centers were directly connected to prenatal health care services and not designed to bring voluntary HIV counseling and testing services to the general population.<sup>170</sup>

Where counseling is given, it rarely is sufficient to allow women to make informed decisions on testing, and it does not give them the tools and information they need to prevent HIV transmission to themselves, their sex partners, and their infants. This is symptomatic of a more general failure of Dominican government authorities to take seriously the connection between entrenched sex inequality, high levels of violence against women, and the spread of HIV/AIDS.

There continues to be little or no oversight, evaluation, and sanctioning of health personnel who refuse to implement existing norms for counseling and testing and legal protections of the rights of women living with HIV. The U.N. Guidelines specifically

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<sup>168</sup> Human Rights Watch interview with Jose Antonio Matos, deputy director, Maternal-Infant Health Program, Ministry of Public Health and Social Support, Santo Domingo, January 27, 2004.

<sup>169</sup> Human Rights Watch interview with Yolanda Pie, Santo Domingo, January 15, 2004.

<sup>170</sup> E-mail message from María Isabel Tavarez, general coordinator, National Program for Comprehensive Care of Persons Living with HIV/AIDS [Programa Nacional de Atención Integral a PVVS], Ministry of Public Health and Social Support [Secretaría de Estado de Salud Pública y Asistencia Social], to Human Rights Watch, April 5, 2004.

recommend that “an independent agency should be established to redress breaches of confidentiality.”<sup>171</sup> Such an agency does not exist in the Dominican Republic and Human Rights Watch is aware of no cases in which medical personnel have been prosecuted for such violations.<sup>172</sup>

The Dominican Republic has undertaken an important program to reduce parent-to-child HIV transmission and has achieved some significant initial successes. The program was conceived in 1999 and implemented in several phases. The original intent of the program was to ensure full implementation in a limited number of hospitals, followed by evaluation and adjustments in the implementation strategy, before attempting national coverage.<sup>173</sup> In 2002, the government declared the program national, and at present all public hospitals and clinics are required to implement it.<sup>174</sup> The program has filled an important gap in the government’s response to the HIV/AIDS crisis in the country and has made real advances by prioritizing HIV counseling, testing, and access to short-course antiretrovirals for pregnant women.

In 2003, government figures showed that 38 percent of women who tested HIV-positive during pre-natal attention at public hospitals received nevirapine immediately before the birth of their children, up from 28 percent in 2002 and none before the implementation of the program. In 2003, 31 percent of women received pre-HIV test counseling when they attended public prenatal checkups for the first time (representing 62 percent of all tests), up from virtually none before the program was initiated. Follow-up data from two hospitals suggests that the parent-to-child transmission rate of women enrolled in the program to reduce parent-to-child HIV transmission is down to 20 percent from 34 percent before the program’s implementation, representing a 40 percent reduction in the infection rate.<sup>175</sup> Although there is still considerable room for improvement, these are laudable advances.

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<sup>171</sup> U.N. Guidelines, article 30(c).

<sup>172</sup> Currently, breaches of confidentiality can be sanctioned by one to six months in prison and a fine of ten to one hundred pesos (U.S.\$0.22 to U.S.\$2). Given the paltry sums set forth in the current law, moreover, fines can be expected to have little or no deterrent effect unless and until the sums are adjusted upward. The exchange rate used is 45 Dominican pesos to one U.S. dollar, the rate on March 26, 2004.

<sup>173</sup> Human Rights Watch interview with Eddy Pérez-Then, deputy executive director, National Research Center on Maternal and Child Health (CENISMI), Santo Domingo, January 9, 2004.

<sup>174</sup> Human Rights Watch interview with María Isabel Tavárez, general coordinator, National Program for Comprehensive Care of Persons Living with HIV/AIDS, Ministry of Public Health and Social Support, January 29, 2004. Private clinics are subject to the same legal norms as public hospitals, but may not offer the same program to prevent parent-to-child HIV transmission.

<sup>175</sup> See Eddy Pérez-Then (ed), *Monitoreo de las Estrategias de Reducción de la Transmisión Vertical del VIH en la República Dominicana* [Monitoring of Strategies to Reduce Vertical Transmission of HIV in the Dominican Republic] (Santo Domingo: Centro Nacional de Investigaciones en Salud Materno Infantil, CENISMI, 2002), Technical Publication Series I; María Isabel Tavarez, “Programa Nacional de Reducción de la Transmisión

Human Rights Watch believes that one important remaining obstacle to success of the program is the government's continuing failure to address women's rights violations in the health care system in general and in the prenatal care setting in particular. As the interviews above demonstrate, such violations include gross breaches of confidentiality likely to endanger both mother and the baby once it is born, and systemic failures to provide adequate pre-test counseling to preserve women's right to informed consent.

In the design of the national program to reduce the risk of parent-to-child HIV transmission, moreover, the doctor in charge of implementing the program at each hospital is also the main evaluator of the implementation.<sup>176</sup> This creates a clear conflict of interest and does not allow for independent monitoring in situations where the supervisor is part of the problem. The national program to reduce the risk of parent-to-child HIV transmission has no independent complaint mechanism, other than judicial review, which only applies to situations that clearly contravene domestic law. In this manner, lesser transgressions cannot be remedied before they lead to other, more serious violations.

The government recently commenced efforts to reform the program in a manner which, given rampant confidentiality breaches and insufficient counseling, would be insufficient to remedy women's human rights violations and abuse. A draft bill pending introduction in the Dominican Congress was originally framed in language that would have made HIV testing mandatory for pregnant women. Human Rights Watch interviews with key drafters or promoters of the bill suggest that, despite the mandatory language, the intention behind the bill was to introduce HIV counseling and testing as a routine part of prenatal health care services, switching from the existing "opt-in"<sup>177</sup> system, in which women (on paper at least) must affirmatively consent if there is to be any testing, to an "opt-out"<sup>178</sup> system, in which women are routinely tested unless they

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Vertical del VIH"; and Eddy Pérez-Then et al, "Preventing Mother-to-Child HIV Transmission in a Developing Country: The Dominican Republic Experience," *Journal of Acquired Immune Deficiency Syndromes*, Volume 34(5), 15 December 2003, pp. 506-511.

<sup>176</sup> Human Rights Watch interview with Jose Antonio Matos, deputy director, Maternal-Infant Health Program, Ministry of Public Health and Social Support, Santo Domingo, January 27, 2004.

<sup>177</sup> The standard of voluntary counseling and testing is sometimes referred to as "voluntary opt-in" testing. Megan Rauscher, "'Opt-Out' HIV Tests Could Reach More Pregnant Women," *Reuters*, November 14, 2002.

<sup>178</sup> Government health authorities in the United States and a number of other countries have in recent years recommended the practice of "opt-out" testing for pregnant women, where, in some formulations, women are told that HIV testing is a regular part of prenatal diagnostics and care, and the HIV test is performed unless the women actively refuses it. Megan Rauscher, "'Opt-Out' HIV Tests Could Reach More Pregnant Women." See also Centers for Disease Control and Prevention (CDC), *Revised Guidelines for HIV Counseling, Testing and Referral and Revised Recommendations for HIV Screening of Pregnant Women* [online] <http://www.cdc.gov/mmwr/PDF/rr/rr5019.pdf> (retrieved, April 15, 2004). Some experts refer to "routine" HIV

say no.<sup>179</sup> This clarification by the bill's supporters is an important one, though the establishment of an "opt-out" testing system in a context of insufficient counseling is still cause for concern.

As this report has shown, many women in the Dominican Republic healthcare system currently are not given the information they need to make an informed decision about HIV testing and the confidentiality of their test results is not respected. The result of these abusive practices is stigma and more abuse. Absent significant improvements in the area of counseling and confidentiality, any move toward more routine "opt out" testing is likely to be accompanied by increases in such violations, to the detriment of women's rights and of effective HIV/AIDS prevention and treatment.<sup>180</sup>

Voluntary HIV counseling and testing is the standard set by the U.N. Guidelines and the UNAIDS Policy on HIV Testing and Counseling.<sup>181</sup> The U.N. Guidelines note that the right to privacy includes the state obligation "to guarantee that adequate safeguards are in place to ensure that no testing occurs without informed consent, that confidentiality is protected, particularly in health and social welfare settings, and that information on HIV status is not disclosed to third parties without the consent of the individual."<sup>182</sup> UNAIDS has consistently emphasized the importance of voluntariness, quality counseling, informed consent, and confidentiality in HIV testing and care, as essential parts of HIV prevention strategies. In addition, a strong presumption in favor of systems created to respect human rights exists in international human rights law, because such systems entail a higher degree of protection for people who are at risk of

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testing, in which testing is the default policy for a particular population or in particular circumstances. Kevin De Cock, Dorothy Mbori-Ngacha, and Elizabeth Marum, "Shadow on the continent: public health and HIV/AIDS in Africa in the 21st century," *The Lancet Vol. 360*, July 6, 2002, pp. 67-72.

<sup>179</sup> Human Rights Watch interviews with Laura Pujols, legal consultant, Presidential AIDS Council (Consejo Presidencial del SIDA, COPRESIDA), Santo Domingo, January 29, 2004; and with Ernesto Guerrero, director, Country Program, Dominican Republic Office, Joint United Nations Programme on HIV/AIDS, Santo Domingo, January 29, 2004.

<sup>180</sup> Some experts have argued that opt-out or routine testing may, in fact, lead to even less pre- and post-test counseling, unless stringent measures are imposed to avoid this situation. These experts have noted, that characterizing HIV testing as "routine" may give health care providers the impression that they are relieved of their responsibility to give information about HIV and seek informed consent for testing. Canadian HIV/AIDS Legal Network, "HIV Testing and Pregnancy" [online] <http://www.aidslaw.ca/Maincontent/issues/testing/e-info-ta14.htm> (retrieved May 26, 2004).

<sup>181</sup> Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS, *HIV/AIDS and Human Rights International Guidelines* (from the second international consultation on HIV/AIDS and human rights 23-25 September 1996, Geneva) (U.N. Guidelines) (Geneva: UNAIDS, 1998), U.N. Doc. HR/PUB/98/1, para. 28(b); and Joint United Nations Programme on HIV/AIDS, "UNAIDS Policy on HIV Testing and Counseling," Report 1/8/1997 [online] <http://www.unaids.org/en/in+focus/topic+areas/hiv+diagnostic+tests.asp> (retrieved on May 26, 2004).

<sup>182</sup> U.N. Guidelines, para. 97.

discrimination and abuse. The state has an obligation to justify measures that may restrict rights or that may limit the enjoyment of rights.<sup>183</sup> Human Rights Watch research suggests that the government urgently must implement measures that guarantee quality pre- and post-test counseling, address discriminatory barriers that limit the ability of women to prevent HIV transmission in their marriages or long-term unions, and implement and enforce a zero-tolerance policy on the unauthorized release of HIV test results.

## VI. Conclusion

The Dominican Republic is in the middle of a growing HIV/AIDS epidemic, which is spreading faster among women than men. In this context, many women face human rights violations on at least two major fronts: in the workplace and when they use government prenatal or other health care services. In the health sector, pre- and post-test counseling is grossly insufficient, and health personnel release confidential HIV test results without authorization and deny or delay healthcare to women living with HIV. In the workplace, women workers living with HIV are fired or simply never offered a job. Many individuals living with HIV in the Dominican Republic exclude themselves from seeking work or health services because they fear stigmatization and abuse. Because women are more likely to know their HIV status, this happens more frequently to them, adding to an already unusually wide gender gap in unemployment figures.

The government has recently implemented a number of measures that contribute to the prevention of HIV/AIDS, for which it deserves praise. It has, however, failed to take women's inequality and discrimination seriously as a contributing factor to the spread of the disease, and has displayed no political will to provide redress for the rampant discrimination suffered by women workers living with HIV or AIDS, or to establish a credible and independent oversight mechanism to identify and remedy violations in the health care system. The domestic AIDS law includes sanctions for the unauthorized release of HIV test results, but these sanctions are not applied despite rampant abuse.

Reform is urgently needed to guarantee essential pre- and post-test counseling for all tested individuals, as well as stringent confidentiality measures with a zero-tolerance policy for breaches of confidentiality. If such reform is not implemented, the government's failure to protect women's rights would continue to contribute to a

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<sup>183</sup> See Committee on Economic, Social and Cultural Rights, "The nature of States parties obligations (Art. 2, par.1), General Comment 3 (General Comments," December 14, 1990, in particular paras. 5, 9, and 10; and Human Rights Committee, "General Comment No. 05: Derogation of rights (Art. 4)," July 31, 1981.

situation where women are blamed for bringing HIV into their relationships—with real and often disastrous consequences for their lives and those of their dependents.

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